1/27/05

IN THE MATTER OF THE APPLICATION OF HOWARD RAMSAY – LEGAL OWNER; NITA AND LOUIS SAVADER – C.P. FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE W/S OF LIGMAN AVE., NW/COR OF ALMA AND LIGMAN AVENUE (2108 ALMA AVENUE) 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	* * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 04-250-SPH

* * * * * * * * *

OPINION

Background

The property in question is in Edgemere on Jones Creek in the Chesapeake Bay Critical Area. It is comprised of .66 acre zoned D.R. 5.5. The Whistler Corporation bought the property in 1988. At that time there were four single-family dwellings, in excess of the maximum three allowed by multiplying 5.5 x .66. The property also appeared to have setback problems. In the course of rehabilitating the property, Whistler was advised that it had to establish the legitimacy of the nonconforming use of the property. In 1989, the Whistler Corporation, through Howard Ramsay, applied to the Baltimore County Zoning Commissioner for a determination that the subject property was a lawful nonconforming use. The then-Deputy Zoning Commissioner, in Case No. 89-343-SPH, decided that "the subject property consisting of four single-family dwellings has not changed since 1935 and pre-dates the 1945 zoning regulations and that a nonconforming use existed."

In 1989 the Whistler Corporation filed with the State of Maryland for a condominium regime and thereafter rebuilt the four older homes into the newer units which existed on the site at the time of the particular incident in question.

In March 2001, the house at 2108 Alma Avenue was destroyed by a tenant who was residing in the dwelling at the time. He permitted water to overflow and completely damaged the interior of the home to the point that the then-owner, Howard Ramsay, for safety and health reasons, obtained a permit from Baltimore County to raze the property. The permit was issued on March 21, 2001 and the property was razed on or about November 21, 2001.

Due to financial reasons and Mr. Ramsay's inability to secure competent contractors, Mr. Ramsay was unable to start the reconstruction of 2108 Alma Avenue.

Ramsay, and Chris Barkley, his realtor, approached Baltimore County in October 2003. Ramsay and Barkley, as well as the County, recognized that Ramsay needed to take some action to restore 2108 Alma Avenue before the expiration of the 2-year period set forth in BCZR § 104.2. That section states:

> A structure damaged to any extent or destroyed by fire or other casualty may be restored within two (2) years after such destruction or damage but may not be enlarged.

Mr. and Mrs. Louis Savader purchased the properties when it was apparent to Mr. Ramsay, due to his financial situation, that he would not be able to rebuild the house. A Petition for Special Hearing was originally filed by Barkley on behalf of Ramsay requesting "extension of the zoning case #89-343-SPH." The Petition was filed on November 14, 2003, and subsequently amended to include a longer explanation of the need for the extension of the two-year period permitted under § 104.2.

The Zoning Commissioner denied the special hearing and refused to extend the two-year limit permitted for rebuilding or restoring a nonconforming use under § 104.2.

People's Counsel raised several questions in its Brief to the Board. The Board feels that the following questions are pertinent to his matter.

1. Has there been a termination of the nonconforming use?
2. Can the two-year period for restoration lawfully be extended?
3. Has there been compliance with BCZR 500.14 for applications in the Chesapeake Bay Critical Area?

Decision

Nonconforming uses are defined in BCZR § 101 as follows:

> A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use.

BCZR § 104 governs these uses and states in pertinent part:

> 104.1 A nonconforming use (as defined in § 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from

such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

104.2 A structure damaged to any extent or destroyed by fire or other casualty may be restored within two years after such destruction or damage but may not be enlarged. In the case of residential use structures which are nonconforming in density, the number of dwelling units or density units rebuilt may be equal to but may not exceed the number of units which existed before the casualty.

BCZR 500.14 deals with zoning petitions within the Critical Area. It states:

Within the Chesapeake Bay Critical Area.

No decision may be rendered by the Zoning Commissioner on any petition or special exception, variance or special hearing unless the Zoning Commissioner has received from the director of the department of environmental protection and resource management, or his designated representative, written recommendations describing how the proposed requested would:

A. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off the surrounding lands;

B. Conserve fish, wildlife, and plant habitats; and

C. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also adjust the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts.

Nonconforming uses are generally not looked upon with favor by governmental entities. In general, the policy of the law is to eliminate nonconforming uses over time. *Prince George's County v. E. L. Gardner*, 293 Md. 259, 267-68 (1991).

In the opinion of the Board,, §§ 104.1 and 104.2 of the BCZR are quite clear with respect to the requirements for nonconforming uses. Section 104.1 states that "a nonconforming use (as defined in § 101) may continue except as otherwise specifically provided in these regulations…." [Emphasis supplied.] Section 104.2 allows for a structure that has been damaged or destroyed by other casualty to be restored within 2 years after such destruction or damage. Neither § 104.1 nor § 104.2 provides for any extension or enlargement of the 2-year period.

Petitioner argues that the use of the word "may" in § 104.2 rather than the word "shall" indicates that the Council made the provision "permissive" and not mandatory. The Board takes issue with this interpretation of the language of § 104.2. Section 104.2 states "a structure damaged to any extent or destroyed by fire or other casualty may be restored within two (2) years after such destruction or damage but may not be enlarged. In the case of residential use structures which are nonconforming in density, the number of dwelling units or density units rebuilt may be equal to but may not exceed the number of units which existed before the casualty." [Emphasis added.]

In our opinion it is clear that the word "may" after the word "casualty" indicates that the owner has the right to restore the structure or not restore the structure. The word "may" does not modify the 2-year period for reconstruction. In addition, the use of the word "may" when referring to the number of units again is permissive. It certainly cannot be contended that the use of the word "may" in the last lines of the section would allow more density units to be rebuilt than were originally found in the nonconforming use.

The owners of the unit contend they intended to reconstruct the unit and were prohibited from doing so by the fact that they did not have sufficient funds to undertake a reconstruction project until after the whole condominium was sold. At that point, the owners did not have an opportunity to rebuild the property since there was no time to obtain a building permit, and also there was interference from Hurricane Isabel which occurred at some point during that period of time. While we are sympathetic with the position in which the Petitioners found themselves, unfortunately, the law does not make any provision for this situation. Section 104.1 states in part, "...provided that upon any change from such nonconforming to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate."

In our opinion, this language is clear that regardless of the intent of the parties, if the use is abandoned or discontinued for a period of one year or more, the nonconforming use is lost. *See Canada Tavern Inc. v. Town of Glen Echo*, 260 Md. 206, 271 A.2d 664 (1970). Section 104.2 allows the owner of a damaged property a period of 2 years within which to reconstruct the same property to the size and density of the original nonconforming use. It says nothing about extension of time or expansion of the 2-year period. Therefore, we will deny the extension of the nonconforming use as requested in the Petition for Special Hearing.

In addition, we would rely on the fact that the Petitioner has not complied with § 500.14 by requesting from the Director of the Department of Environmental Protection & Resource Management the written recommendations required in that section.

ORDER

THEREFORE, IT IS THIS 27th day of January, 2005 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to extend the two (2) year period permitted under § 104.2 of the *Baltimore County Zoning* Regulations be and is hereby **DENIED.**

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chair

Margaret Brassil, Ph.D.

John P. Quinn

10/11/04

RE: PETITION FOR SPECIAL HEARING	*	BEFORE
W/Side of Ligman Avenue,		
NW corner of Alma and Ligman Avenue	*	THE
(2108 Alma Avenue)	*	COUNTY
15th Election District		
7th Councilmanic District	*	BOARD OF APPEALS
Legal Owner(s): Howard Ramsey	*	FOR
Contract Purchaser(s):		
Louis & Nita Savader	*	BALTIMORE COUNTY
Petitioners	*	Case No.: 04-250-SPH

* * * * * * * * * * * *

MEMORANDUM OF PETITIONERS
IN LIEU OF FINAL ARGUMENT

STATEMENT OF THE CASE

This matter comes before the County Board of Appeals as a result of a Petition for Special Hearing filed by the owner of the subject property, at that time - Howard Ramsey and the contract purchasers, Louis & Nita Savader, who have since purchased the property. The Petitioners requested a Special Hearing by way of a Petition filed with the Zoning Office, pursuant to §500.7 of the Baltimore County Zoning Regulations to determine whether or not the Zoning Commissioner should approve "extension of Zoning Case No.: 89-343-SPH." The Petition for

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BOARD OF APPEALS

Special Hearing was subsequently modified (apparently through comments through the Zoning Office) to state:

> "a one-year extension of the two (2) year limitation on a structure removed due to damage per §104.2 BCZR, and due to expire November 20, 2003 and extension of Zoning Case 89-343-SPH to permit all existing non-conforming uses on the subject property."

This matter was heard before the Zoning Commissioner and denied on January 7, 2004. The Zoning Commissioner discussed the Baltimore County Zoning Regulations §104 and thereafter discussed the word "casualty" and concluded to rule against the Petition.

At that time, the Savaders did not participate in the proceeding but left the presentation to Chris Barkley, a realtor and Howard Ramsey, the then property owner. There was no counsel for the Petitioners.

An appeal was timely taken to this Board by the Savaders counsel retained and the matter comes before this Board, *de novo*.

STATEMENT OF FACTS

Mr. Louis Savader testified on behalf of the Petitioners that he appeared before the Zoning Commissioner without an attorney and relying upon the Legal Owner, Howard Ramsey, at that time and Chris Barkley, a realtor, to present the case to the Zoning Commissioner. He testified that the Zoning Commissioner

misconstrued the request that was being made in regard to the subject property. Savader had already contracted to acquire the subject site and subsequently proceeded to settlement for the property. He then retained counsel to present this matter on appeal to the County Board of Appeals.

He recited the history of the site which consisted of an irregular waterfront parcel with frontage on Jones Creek in the Community of Chesapeake Terrace in Eastern Baltimore County. The property is located on the north side of Ligman Avenue between Anna and Alma Avenues and contains approximately .668 sq. ft. in area zoned DR 5.5. The property has existed as a non-conforming use for four (4) single-family dwellings known as 2108, 2110, 2112 and 2114 Alma Avenue. These homes were built in the 1920's prior to the adoption to the first set of Zoning Regulations in 1945. In 1989, the Whistler Corporation, through Howard Ramsey applied to the Baltimore County Zoning Commissioner for a determination that the subject property was a lawful non-conforming use. The then Deputy Zoning Commissioner Ann Nastarowicz decided that "the subject property consisting of four (4) single-family dwellings has not changed since 1935 and predates the 1945 Zoning Regulations and that a non-conforming use existed." That determination was made in Case No.: 89-343-SPH. In July, 1989, the

Whistler Corporation filed with the State of Maryland for a condominium regime and thereafter rebuilt the four (4) older houses into the newer units which existed on the site at the time of this incident.

In March, 2001, the house at 2108 Alma Avenue was destroyed by a tenant residing in the dwelling at that time. He permitted water to overflow and completely damaged the interior of the home to the point that the then owner, Ramsey, for safety and health reasons got a permit to raze the property from Baltimore County. The permit was issued on March 21, 2001.

Ramsey then razed the property, razed the one house known as 2108 Alma Avenue on November 21, 2001.

Due to financial reasons and Mr. Ramseys inability to secure competent contractors, Ramsey was unable to start the re-construction and he was nearing the end of the two (2) year period which was set forth in Baltimore County Zoning Regulations §104.2. Section 104.2 states that:

> "a structure damaged to ***any*** extent or destroyed by fire or other casualty may be restored within two (2) years after such destruction or damage, but may not be enlarged..."

Ramsey and Chris Barkley, his realtor, approached Baltimore County in October, 2003. It is clear that Ramsey and Barkley, as well as the County, recognized that Ramsey needed to take some action to restore 2108 Alma Avenue

before the expiration of the two (2) year period. After Ramsey contacted the Baltimore County Office of Zoning (John R. Alexander, Planner II in Zoning Review), Mr. Alexander wrote to Ramsey in regard to this issue. (See Alexanders letter of October 23, 2003, submitted as an Exhibit). In his letter, Alexander acknowledged that §104.2 permitted a non-conforming use to be rebuilt within two (2) years of such destruction. (**Note:** The razing had occurred on November 21, 2001). He indicated that they had until November 20, 2003 ***to begin*** the rebuilding process.

The testimony of Savader further explained that the Whistler Corporation and Ramsey, due to a financial situation, could not rebuild the house and that was the reason why it was sold to Savader.

The testimony further elicited that while Ramsey and Barkley wanted Alexander to extend the permit, Alexander informed them that he could not, that they needed to seek a Petition for Special Hearing.

The Petition for Special Hearing was originally filed by Barkley on behalf of Ramsey requesting "extension of Zoning Case No.: 89-343-SPH." ***It was filed prior to November 20, 2003.*** It was subsequently amended by either Barkley at the request of the Zoning Office or the Zoning Office to include a longer explanation of the need for the extension of the two (2) year period permitted under §104.2.

Mr. Savader testified that he believed there had been a building permit issued and that they were seeking to have that permit extended. The Office of People's Counsel contends it is a "red herring" in regard to the building permit. The point of the matter is that it is clear that the request of the Petitioners was to extend the two (2) year time limit permitted for rebuilding or restoring a non-conforming structure under §104.2. The Memorandum of the People's Counsel, both prior to and after the hearing, missed the point in regard to the intention of the Petition for Special Hearing. Likewise, the Zoning Commissioner's decision went off on the discussion of non-conforming use and the question of what is a casualty and what is not a casualty; such discussion was irrelevant. Section 104.2 provided for reconstruction of "a structure damaged to any extent ..." An analysis of 'casualty was not required by §104.2.

Both the Office of People's Counsel and the Zoning Commissioner missed the point and issue involved in this case.

The Petitioner is asking this Board to extend for good reasons, the two (2) year period permitted to restore the non-conforming structure under §104.2. That is the advice that Alexander and the Zoning Office gave the Petitioner; the Zoning Office could not and did not have the authority to extend the timeframe under §104.2; however, the matter could be brought to the Commissioner, by a Special

Hearing request who could make that determination. In reading the Zoning Commissioner's decision, it clear that he did not understand the Petitioners request contained in the Petition for Special Hearing.

QUESTION PRESENTED

1. **The question presented to the Board is two-fold:**

   a. **Does the Baltimore County Zoning Regulations, §104.2 permit the restoration of a damaged non-conforming use beyond a period of two (2) years?**

   b. **Is the Petitioner Savader, entitled to such an extension?**

ARGUMENT

A. Section 104.2 must be read as permitting an extension of the two (2) year period for restoration of a lawful non-conforming use.

Section 104.2 states:

> "A structure damage to any extent or destroyed by fire or any other casualty ***may*** be be restored within two (2) years after such destruction or damage may not be enlarged. In a case of residential use structures which are non-conforming in density, the number of dwelling units or density units rebuilt may be equal to but ***may*** not exceed the number of units which existed before the casualty. (Bill No.: 124-1991)."

It is clear in reading this Section that the Baltimore County Council utilized the word ***may*** as opposed to ***shall*** in two (2) places in the above Section. The Council made the provision "permissive" and not mandatory. If the Council had

desired that no authority or discretion was permitted to the Zoning Commissioner in regard to the extension of the two-year timeframe for rebuilding, it would have utilized the word "shall." It did not. Instead, the Council made it "permissive." John Alexander of the Zoning Office recognized that fact and suggested that the Petition for Special Hearing be filed. There can be only one interpretation of the Councils use of their use of the word "may" in the statute and that is to permit discretion by the Zoning Commissioner when otherwise a damaged structure could not be restored within the time period.

The case law in Maryland and in other jurisdictions makes a clear distinction between the use of the word "may" and "shall" when utilized in a statutory context. Generally "may" is permissive and "shall" is mandatory. It is generally stated by the Courts that:

> "ordinarily the word "shall" unless the context within which it is used indicates otherwise, is ***mandatory*** when used in a statute and thus denotes an imperative obligation inconsistent with the idea of discretion. *Bright v. Unsatisfied Claim and Judgment Board*, 275 Md. 165 (1975).
>
> The use of the word "shall" is presumed mandatory unless its context would indicate otherwise." *Moss v. Director, Patuxent Institute*, 279 Md. 561 (1977).

On the other hand, the courts have indicated that the word "may" used in a statute bears its ordinary significance of ***permission*** unless the context or purpose

of the statute shows it is meant to be imperative. *Fleishman v. Kremer*, 179 Md. 536 (1941).

In *Maryland National Capital Park & Planning Commission v. Silkor Development Corporation*, 246 Md. 516 (1966), Judge Finan delivering the opinion of the Court stated:

> "We are of the opinion that the Appellant is correct in its contention and the language of Chapter 815 is clear and ambiguous and the word "may" as used therein is to be construed in the permissive sense."

The Court, in that case, concluded that the Legislature meant to grant authority to Montgomery County Council whereby it could, if it so chose, provide regulations for pre-application procedures for those desirous of developing real estate subdivisions.

The Court in *Silkor Corporation*, in commenting on *Fleishman v. Kremer*, 179 Md. 536 (1939) states:

> "The Appellant contends that the word "may" in a statutory authority and particularly that given the Orphan's Court ... is always to be construed as must or shall and that the Orphan's Court here was compelled to remove the Executor's if the sale was made without an Order; that is incorrect ... The word bears its ordinary significance of *permission* unless the context of the purpose of the statute shows that is meant to be imperative: only when the context or subject matter compels such destruction."

The Court of Special Appeals in *Patten v. Board of Liquor*, 107 Md. App. 224 (1995) was again called upon to interpret the use of the word "shall" or "may." In that case, the Court ruled that Maryland Law does not require all

property owners to appear in person or file an Affidavit in regard to a Liquor Board contest. The Court stated that "the plain language of 'the Affidavit Rules' does not dictate that we adopt such an interpretation as requested by *Patten*. The Court found that "the language appears to only be discretionary; it only dictates what property owners "may" do as opposed to "shall" do.'"

From the above citation, it is extremely clear that the Baltimore County Council intended to provide discretion on the part of County authorities to extend the two (2) year reconstruction period.

The Zoning Commissioner failed to understand what he was being asked to do by the Petitioner. This Board should have no such difficulty. It is simply a request ***that was filed prior to*** November 20, 2003 by the property owner to extend the time for rebuilding. Mr. Savader has indicated that he has the resources and would upon such approval immediately be prepared to seek a building permit to rebuild 2108 Alma Avenue no larger that what was existing on the site. Savader further testified that the foundation of the building is still there and has simply been covered over with dirt to not only protect the foundation but persons on the property from an exposed foundation.

B. Is Savader entitled to an extension?

The Petitioner suggest that because of financial and other problems of the previous owner, the building restoration had not begun on the building. In addition, he testified as to the efforts made by the prior owner to properly reserve his right to either reconstruct 2108 or sell the property to someone who could. Savader further testified as to the difficulties of the Whistler Condominium Regime and the need to recharacterize the obligations for the three (3) remaining properties if he is not allowed to reconstruct Building #4.

The situation involved in this case is very different from the normal non-conforming use case. Normally, the non-conforming use would go out of existence if the structures were destroyed and not rebuilt. The argument of the People's Counsel is that the non-conforming use law desires that the non-conforming use go out of existence to benefit the ability to apply proper zoning and proper land use planning to the site. Here, that argument fails to follow to a logical conclusion because the three (3) remaining residential buildings will still be non-conforming. The non-conforming use of this property will not go out of existence regardless of the action of the Board of Appeals. The numerous cases cited by the People's Counsel which purport to require elimination of the non-conforming use of this property have no application here. This property will continue to be non-conforming for three (3) residential buildings.

Further, there has been no testimony from any member of the Community or public that they object to this request. It is clear that since the 1920's, this property has been occupied as residential structures that have existed throughout the years and which have not caused any difficulty to the neighborhood or the residential character to the neighborhood. The non-conforming use of four (4) residences has been an accepted fact of life in the neighborhood without objection for approximately 75 years.

Further, Mr. Savader testified to the expensive expenditure of money which he has utilized to upgrade and update and enhance the property upon which these four (4) structures existed.

CONCLUSION

The Petitioners respectfully request that this Board review §104.2 of the Baltimore County Zoning Regulations and find that there is no prohibition contained within that Section to eliminate or deny the right of the Zoning Commissioner and this Board to extend upon a showing of good cause; the two (2) year restoration period based on the use of the word "may." Secondly, the Petitioner requests that because having been shown by Mr. Savader during the course of his testimony as to the inability to restore 2108 Alma Avenue within the two (2) year period based upon good and valid reasons, that the Board order that

the time period be extended from November 20, 2003 for a period of one year, providing that the period of the filing of the Petition by the Petitioners to the time of the Board's decision be additional time granted to the Petitioner Savader for purposes of applying and obtaining a building permit and beginning construction on 2108 Alma Avenue.

Respectfully submitted,

J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of October, 2004, a copy of the foregoing Memorandum of Petitioners in Lieu of Final Argument was mailed first class, postage pre-paid to the following: Office of People's Counsel, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

J. CARROLL HOLZER, Esquire

9/21/04

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BOARD OF APPEALS

RE: PETITION FOR SPECIAL HEARING W/side of Ligman Avenue, at the NW corner of Alma and Lieman Avenue	*	BEFORE THE COUNTY BOARD OF APPEALS
(2108 Alma Avenue) 15th Election District, 7th Councilmanic District	*	FOR
Legal Owner(s): Howard Ramsey Contract Purchaser(s): Louis and Nita Savader Petitioners	*	BALTIMORE COUNTY Case No. 04-250-SPH

* * * * * * * * * * * *

Post-Hearing Memorandum of People's Counsel for Baltimore County

This post-hearing memorandum supplements the memorandum previously filed in this case. The material facts produced at the hearing are consistent with the facts described in that memorandum. People's Counsel, therefore, maintains the legal positions there asserted. In this memorandum, we address in more detail several questions which arose at the hearing about building permit status, the condominium regime and documents, and the timing of the Savaders purchase of the property from Howard Ramsey.

The first point is that there never was any building permit issued to replace the house which Mr. Ramsey razed in late 2001 or early 2002. The only permits on record for 2108 Alma Avenue are the plumbing permit P466767 dated November 21, 2001 and the permit B475788 to raze the property dated March 29, 2002. The actual destruction of the property may have begun or occurred prior to the permit. Either way, the building was down by April, 2002, the date of the GIS photo.

Secondly, any suggestion in testimony about a building permit is rumor or speculation. There is no proof. This is a red herring. In any event, even if a building

permit had been issued, it would have been without legal authority and could not revive a nonconforming use which terminated by discontinuance. In our earlier memorandum, we discussed the law of nonconforming use and termination in detail. We also discussed the doctrine that "estoppel" does not legitimize a building permit which is issued in conflict with the zoning law.

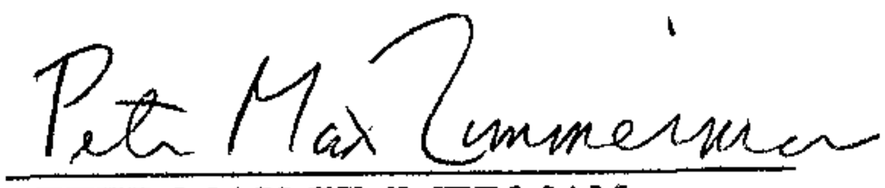
Thirdly, the condominium declaration does not require the owner to rebuild a house on every lot or unit. In any event, a condominium declaration cannot set up a regime which violates the zoning law. This is true as a matter of basic common law of contract and property. The Maryland Condominium Act reinforces this point. Md. Ann Code Real Property Art. Sec. 11-122, attached. Remarkably, the CBA just decided an analogous issue in the Pearse case, 03-566-SPH, 17022-17024 York Road. Consistent with precedent, the CBA held that the provisions of a will could not supersede the zoning law.

Fourthly, from an equitable point of view, the Savaders entered into a contract for this entire condominium property, including three other dwellings, with full knowledge that the viability of rebuilding 2108 Alma Avenue was in doubt. Indeed, they proceeded in January, 2004 to settlement on a contingent contract in the face of an imminent adverse Zoning Commissioner decision. Even if they settled just prior to receiving the decision, it was as if to say that they would take the property regardless of the consequences. They did not make any claim of misrepresentation or inequity against the seller. They could have, and may have, negotiated a price or contingency based on the uncertainty surrounding 2108 Alma Avenue. From any point of view, the Savaders assumed the risk of an adverse decision. They are in no position to claim hardship or oppression. There is

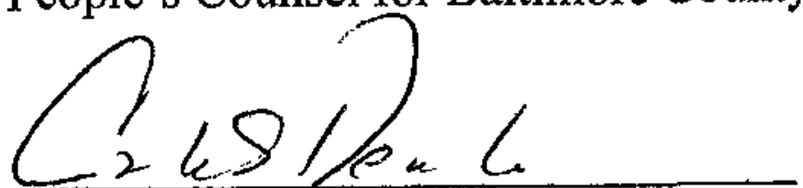
no proof, moreover, that they have lost money or suffered in connection with the voluntary acquisition of this property, which is apparently used for rental income.

This is not a close case. Unfortunately, property owners sometimes believe that their own interests are superior to the zoning law. There is a tendency for this to happen frequently in nonconforming use cases. Property owners imagine that nonconforming uses are like icons which should be revered, sanctified, preserved, and rebuilt under any circumstance. They either do not understand or take seriously the principle of zoning law that nonconforming uses are expected to terminate and disappear.

The Court of Appeals has established these principles in many cases. It would surely maintain this law in the event this case proceeds to Annapolis. As a matter of law, the CBA should reach the same conclusion as the Zoning Commissioner. The present petition must be denied.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of September, 2004, a copy of the foregoing Post-Hearing Memorandum of People's Counsel for Baltimore County was mailed first class mailed, postage prepaid to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmont Avenue, Towson, MD 21286, Attorney for Petitioner.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

8/23/04

RE: PETITION FOR SPECIAL HEARING W/side of Ligman Avenue, at the NW corner of Alma and Lieman Avenue (2108 Alma Avenue) 15th Election District, 7th Councilmanic District	* * * *	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
Legal Owner(s): Howard Ramsey Contract Purchaser(s): Louis and Nita Savader Petitioners	* *	Case No. 04-25[illegible]

* * * * * * * * * * * *

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Memorandum of People's Counsel for Baltimore County

Introduction

Howard Ramsay, property owner, and Louis and Nita Savader, filed a petition for special hearing for an extension of the 2-year period to restore a nonconforming dwelling and to establish nonconforming use status on property in Edgemere. After a public hearing, the Zoning Commissioner on January 7, 2004 issued his findings of fact and conclusions of law. He entered an order denying the petition. The Savaders then appealed. It appears from county tax records that they completed their purchase of the property on January 23, 2004.

The ZC opinion addresses important and interesting issues involving legal interpretation of nonconforming use law and equitable estoppel. Under Sec. 524.1 of the County Charter, People's Counsel is interested to defend the comprehensive maps and law. People's Counsel v. Maryland Marine 316 Md. 491 (1989); People's Counsel v. Crown Dev. Corp. 328 Md. 303 (1992); Sycamore Realty v. People's Counsel 344 Md. 57 (1996); Marzullo v. Kahl 360 Md. 158 (2002).

Because material facts appear to be undisputed, we transmit this letter, along with relevant documentation, and shall submit on the record with respect to the hearing September 1, 2004. In this connection, we ask the Board to admit and consider in evidence all of the documents Petitioners submitted at the ZC hearing and in the record. We shall refer to them below.

Questions Presented

1. Has there been a termination of the nonconforming use?

   a. Can the two-year period for restoration lawfully be extended?

   b. Was there anyway a "casualty" which would make the property eligible for restoration of the use within two years?

   c. Did the property owner's decision to raze the building constitute a further abandonment or discontinuation of the use?

2. Is there a legitimate "estoppel" issue?

   a. Can a permit to raze a dwelling support an "estoppel" argument?

   b. If a building permit were issued for an impermissible use, would "estoppel" furnish a basis to supersede the zoning law?

3. Has there been compliance with BCZR 500.14 for applications in the Chesapeake Bay Critical Area?

Relevant Zoning Regulations

Nonconforming uses are defined in BCZR 101, as follows:

> "A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use."

BCZR 104 governs these uses. It states, in pertinent part:

104.1 A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

104.2 A structure damaged to any extent or destroyed by fire or other casualty may be restored within two years after such destruction or damage buy may not be enlarged. In the case of residentially used structures which are nonconforming in density, the number of dwellings unity or density units rebuilt may be equal to but may not exceed the number of units which existed before the casualty.

BCZR 500.14 deals with zoning petitions within the Critical Area:

Within the Chesapeake Bay Critical Area.

No decision may be rendered by the Zoning Commissioner on any petition for special exception, variance or special hearing unless the Zoning Commissioner has received from the Director of the Department of Environmental Protection and Resource Management, or his designated representative, written recommendations describing how the proposed request would:

A. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off the surrounding lands;
B. Conserve fish, wildlife and plant habitat; and
C. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts.

The Property and Its Zoning History

The property is in Edgemere, on Jones Creek, in the Chesapeake Bay Critical Area. It has .66 acres, zoned D.R. 5.5. The Whistler Corporation bought it in 1988. There were four single-family dwellings, in excess of the maximum three allowed by multiplying 5.5 X .66. It also appeared to have setback problems. In the course of

rehabilitating the property, Whistler was advised that it had to establish the legitimacy of the nonconforming use of the property.

Whistler filed a petition for special hearing, No. 89-343-SPH, along with an "As-Built Plat" dated May 16, 1989, both of which are in the present record. The plat shows the four single-family dwellings and states:

> "The condominium is comprised of Lots 42 and 43 of the previously recorded plat of "Chesapeake Terrace, Section A", Plat Book 5, Folio 34."

Following a public hearing, the Deputy Zoning Commissioner, satisfied that the property had been used continuously for four dwellings since 1932, granted the petition in an opinion and order dated March 13, 1989, also in the record.

Whistler operated the property as a condominium. In or before 2001, according to correspondence in the file and undisputed facts, there was damage at one of the dwellings, identified as 2108 Alma Avenue. Ramsay told the ZC in the present case that the occupants were responsible. The opinion says:

> "At the hearing in the instant matter, Mr. Ramsay testified that he leased all four dwellings for residential occupancy. Apparently, however, in 2001, a tenant severely vandalized the dwelling known as 2108 Alma Avenue. Photographs of the damage were produced at the hearing. As a result of the significant damage suffered, Mr. Ramsay razed that structure on or about November 21, 2001."

There is no detailed proof or specification of the time period of this damage, the duration of the lease, the identity of the tenant, the tenant's conduct, or any communication with the tenant. The record does not show what insurance claims or police reports, if any, were filed. For the purpose of this memorandum, however, we shall assume the accuracy of the

above description. In any event, on or about November 20, 2001, Whistler razed the building.

Our investigation discloses that permits were issued in connection with the razing of the building, issued November 21, 2001 and March 29, 2002. These are attached as Exhibit A. Howard Ramsay obtained a plumbing permit P466767 on November 21, 2001 and permit B475788 to raze 2108 Alma Avenue, dated March 29, 2002. These permits corroborate that the property was in disuse by November 21, 2001, and the building was razed at about that time. The latter permit shows:

"Proposed use: 3 SFDS"

"Existing use: 4 SFDS"

The record includes the application for building permit B475788. It reflects that the proposal was to raze the building, not to construct or rehabilitate. There is no record of a permit to construct a new building.

The standard April 2002 GIS Aerial Photo is transmitted with this memorandum as Map 1. It clearly shows the dwelling was leveled by that time.

In late 2003, Whistler's realtor, Chris Barkley, contacted the zoning office about selling the property. As a result, John Alexander wrote to the Ramsays on October 23, 2003. Exhibit B. This letter is also in the record. It reviews Barkley's information that there were four houses on one lot in a D.R. 5.5 zone. Alexander described the 1989 decision allowing a nonconforming use subject to conditions:

> "There was a Zoning Special Hearing in March 1989 to approve a non-conforming use of the four dwellings. It was granted subject to several conditions, including Section 104.1, which states that discontinuation of a nonconforming use for a

year or more ends its nonconforming status, and 104.2 which says that a structure damaged to any extent or destroyed by fire or other casualty may be restored within 2 years of such destruction, but may not be enlarged. If you can show that the building in question was razed as a result of such a casualty, you have until November 20, 2003 to begin the rebuilding process."

There is also an undated letter in the file from Petitioners' engineer, Edward Koplin, to Carl Richards, Zoning Supervisor, referring to a telephone meeting November 11. Exhibit C. Koplin states:

> "... the building was torn down for structural reasons; the owners [sic] lack of finances prevented beginning new construction on that lot within the two year period noted in zoning case 89-343-SPH. The lack of finances has resulted in the owner needing to sell the property and obtain this extension primarily for the benefit of the new owners who are under contract at this time."

On November 14, 2003, Howard Ramsay, owner, and Louis and Nita Savader, contract purchasers, filed the present Petition for Special Hearing for:

> "a one year extention [sic] of the two year limitation on a structure removed due to damage, per Sect. 104.2 BCZR and due to expire Nov. 20, 2003 & extension of zoning case #89-343-SPH to permit all existing non-conforming uses on the subject property."

As noted above, the ZC denied the petition on January 7, 2004. Nita and Louis Savader appealed, having completed in January the purchase the entire condominium property shown on the site plan: including 2108, 2110, 2112, and 2114. The petition shows the Savaders live on Hunt Club Road in Roland Park in Baltimore City.

Argument

Nonconforming Use Law

BCZR 104.1 allows nonconforming uses to exist unless changed, abandoned or discontinued. BCZR 104.2 addresses fire or other casualty situations. In general, the policy of the law is to eliminate nonconforming uses over time. Prince George's County

v. E.L. Gardner 293 Md. 259, 267-68 (1991) contains an excellent discussion of nonconforming use law. Judge Davidson wrote:

> "This Court has repeatedly recognized that one of the fundamental problems of zoning is the inability to eliminate incompatible nonconforming land uses. In *Grant v. Mayor and City Council of Baltimore,* 212 Md. 301, 307, 129 A.2d 363, 365 (1957), this Court said:
>
> > "Nonconforming uses have been a problem since the inception of zoning. Originally they were not regarded as serious handicaps to its effective operation; it was felt they would be few and likely to be eliminated by the passage of time and restrictions on their expansion. For these reasons and because it was thought that to require immediate cessation would be harsh and unreasonable, a deprivation of rights in property out of proportion to the public benefits to be obtained and, so, unconstitutional, and finally a red flag to property owners at a time when strong opposition might have jeopardized the chance of any zoning, most, if not all, zoning ordinances provided that lawful uses existing on the effective date of the law could continue although such uses could not thereafter be begun. Nevertheless, the earnest aim and ultimate purpose of zoning was and is to reduce nonconformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned, and the ordinances forbid or limit expansion of nonconforming uses and forfeit the right to them upon abandonment of the use or the destruction of the improvements housing the use."
>
> Thus, this Court has recognized that the problem inherent in accommodating existing vested rights in incompatible land uses with the future planned development of a community is ordinarily resolved, under local ordinances, by permitting existing uses to continue as nonconforming uses subject to various limitations upon the right to change, expand, alter, repair, restore, or recommence after abandonment. Moreover, this Court has further recognized that the purpose of such restrictions is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. *The Arundel Corp. v. Board of Zoning Appeals of Howard County,* 255 Md. 78, 83-4, 257 A.2d 142, 146 (1969); *Stieff v. Collins,* 237 Md. 601, 604, 207 A.2d 489, 491 (1965); *Colati v. Jirout,* 186 Md. 652, 655, 657, 47 A.2d 613, 614-15 (1946); *Beyer v. Mayor of Baltimore,* 182 Md. 444, 446, 34 A.2d 765, 766 (1943); *See Kastendike v. Baltimore Ass'n for Retarded Children, Inc.,* 267 Md. 389, 397, 297 A.2d 745, 749-50 (1972).
>
> Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by the provisions of the applicable local ordinances and regulations. *Feldstein v. La Vale Zoning Board,* 246 Md. 204, 211, 227 A.2d 731, 734 (1967); *Phillips v. Zoning Comm'r of Howard County,* 225 Md. 102, 109, 169 A.2d 410, 413 (1961); *Board of Zoning Appeals of Baltimore County v. Gue,* 217 Md. 16, 21-22, 141 A.2d 510, 513 (1958). These local

ordinances and regulations must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses. *Mayor of Baltimore v. Byrd,* 191 Md. 632, 638, 62 A.2d 588, 591 (1948); *Colati,* 186 Md. at 658-59, 47 A.2d at 616; *Knox v. Mayor of Baltimore,* 180 Md. 88, 96, 23 A.2d 15, 18 (1941); *see City of Hagerstown v. Wood,* 257 Md. 558, 563, 263 A.2d 532, 534 (1970); *Hewitt v. County Comm'rs of Baltimore County,* 220 Md. 48, 59, 151 A.2d 144, 150 (1959)."

Baltimore County zoning law follows the prevailing pattern of nonconforming use law. The discontinuation for a year of part of the nonconforming use at the Alma Avenue property terminates the use. In this respect, the law here is reminiscent of the law described in Canada Tavern, Inc. v. Town of Glen Echo 260 Md. 206 (1970), where Judge McWilliams wrote:

> "We think the Council, having in mind a larger purpose, intended to align itself with those local governments which have found it desirable to delete the factor of intent in respect of the abandonment, discontinuation, or cessation of nonconforming uses rather than continuing to run the gamut of its judicial determination in a succession of infinitely variable situations."

I. The Nonconforming Use Has Terminated

Petitioners invoke the exception under BCZR 104.2 for restoration of properties damaged by casualty. But, for reasons stated below, they do not qualify. They have also made no attempt to satisfy BCZR 104.5, with respect to Critical Area standards and there is no indication the use could satisfy them.

a. There is No Lawful Authority to Extend a BCZR 104.2 Restoration Period

The Petition, in asking for an extension, effectively concedes a failure to satisfy the two-year limit on restoration of property destroyed by casualty. Cf. People's Counsel v. Mangione 85 Md. App. 738, 745 (1991). Moreover, the record is replete with documentation that the 2108 dwelling went into disuse and was razed more than two years ago. The short answer to the petition is that there is no legal authority to extend.

As in Canada's Tavern, expiration of the statutory period of discontinuity terminates the use. There, the lessee restaurateur closed up when the liquor license was not renewed. It took time for the owner to get a new lessee to reopen. By then, the statutory period had run. The owner nevertheless applied for and got a certificate of occupancy from the Department of Inspections and Licenses, with the approval of the County Attorney. Upon objection by the Town of Glen Echo, the Board of Appeals affirmed the departmental approval of the certificate, opining that the owner had diligently attempted to find a tenant to continue restaurant operation. The Circuit Court reversed, finding that the intent was irrelevant. The Court of Appeals affirmed the reversal, resulting in the denial of the certificate. Judge McWilliams emphasized the language of the statute is clear and objective. The majority opinion is attached as Case Exh. A.

BCZR 104 does not provide for any extension or additional exception to the statutory period in BCZR 104.2. This section already allows an exception for casualty losses. The exception has time limits, however, which must be respected and enforced. Therefore, the Petition is effectively disqualified on its face.

b. There Was No "Casualty" Loss

The Zoning Commissioner observed on Page 3 of his opinion, in reviewing the "fire or other casualty" criterion under BCZR 104.2, that Webster's Third New International Dictionary defines "casualty" as:

> "A person or thing that has failed, been injured, lost, or destroyed as a result of uncontrollable circumstances."

Roget's II, The New Thesaurus, translates "casualty" as:

"**1.** An unexpected and usu. undesirable event. **1.** ACCIDENT."

Typically, the word "casualty" refers to events involving natural physical forces. Even if a human force may be involved, the event must be sudden, unforeseen, and unusual. Here, Ramsay told the ZC that tenants caused the damage. The opinion refers to "vandalism." Yet the record is sketchy. There is no documentation of what happened.. There is no information on insurance.

When an old building is leased, it is foreseeable that damage sometimes happens. It is taken into account in default provisions in leases. Insurance may be available. Such damage to the property is not a sudden, unforeseen, or unusual event. Rather, it is something which management must address.

In this context, the ZC ruled correctly that there was no "fire or other casualty" involved in the damage here. At most, it was neglect and waste either on the part of the tenants or management, or both.

c. When the Property Owner Decided to Raze the Building, That Was an Act of Abandonment or Discontinuation

The Zoning Commissioner said, on page 4:

"The damage caused to the dwelling that was removed was intentional and in any event was not caused by a casualty."

"Based upon the testimony and evidence offered, it is clear that relief cannot be granted. Mr. Ramsay's removal of the dwelling in 2001 constitutes an abandonment of the nonconforming use designation for that structure under Section 104.1 of the BCZR. Moreover, his desire to now rebuild the entire structure cannot be saved under the provisions of Section 104.2 thereof."

The property owner clearly made a choice to raze the building rather than try to restore it. Whether or not it was otherwise eligible for restoration, the decision to destroy the building rather than rehabilitate it was a voluntary act. It ended the nonconforming use. The razing permit even stated the proposal to be for "3 SFDS." There is nothing left to restore. Indeed, any new building would undoubtedly be quite different from the 1932 building which was there.

II. There Is No Valid "Estoppel" Issue

a. A Razing Permit Is Not a Colorable Basis to Argue "Estoppel."

According to the Zoning Commissioner's opinion, on page 4:

> "Mr. Ramsay contends that after he razed the structure, Baltimore County issued a building permit (B47588) allowing him to rebuild the structure. He contends the County is now estopped from revoking the permission granted by this permit."

Mr. Ramsay did not produce the permit. He did produce the application, which shows, as does the permit, that all that was ever requested or done was to demolish the old structure.

Indeed, all of the correspondence shows that the Ramsays, for reasons of their own, did not inquire into the possibility of building a new dwelling until late 2003 and were even then in no position to do anything. That is why their engineer advised to file for a one-year extension. John Alexander of the zoning office simply referred to the earlier opinion and the applicable law. There is nothing in this record to support an estoppel argument even if it could be applied against the County and the public to overturn the law.

It is a mystery, therefore, how Mr. Ramsay could argue that there was an estoppel issue based on a "building permit." There was no building permit (in the sense of a construction permit). There was no construction done. There was no other premise for even a beginning of an "estoppel" argument.

b. Anyway, a Building Permit issued for an Illegal Use under Zoning Law Would Not Afford Legal Rights Based on "Estoppel" or Any Other Ground

In any event, the County departments have no authority to issue a building permit for an illegal use. So, where such a permit is issued, even where a property owner has undertaken major construction as a result, the use remains unlawful. The Court of Appeals has rejected estoppel arguments under such circumstances in many cases over the years.

Cromwell v. Ward 102 Md. App. 691, 724-25 (1995), excerpt attached as Case Exh. B, includes a recapitulation of the subject. Judge Cathell there wrote:

> "In the case of *Lipsitz v. Parr,* 164 Md. 222, 164 A. 743 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:
>
> > A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law. . . . [T]he ordinance forbade the officials . . . to grant the permit which the plaintiff asked and obtained. . .
> >
> > . . . [I]t was therefore unlawful for the officers . . . to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued . . . does not . . . prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality. . . . *Every one dealing* with the officers and agents of a municipality *is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled* by their acts when done without legal authority.
> >
> > So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act . . . it is not estopped by the unauthorized or wrongful act of its officer . . . in issuing a permit that is forbidden by the explicit

terms of an ordinance. . . . *Valentine v. Rds. Directors,* 146 Md. 199, 206 [126 A. 147] [(1924)]. . . . [Citations omitted, emphasis added.]
164 Md. at 227-28, 164 A. 743.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.,* 313 Md. 413, 545 A.2d 1296 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow* Page 725 *Shopping Center,* 264 Md. 481, 287 A.2d 242 (1972), a case of a timely appeal of the denial of a building permit. In *Inlet Associates,* the Court opined that "[c]onsequently, '[e]veryone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.'" 313 Md. at 437, 545 A.2d 1296. The Court added: "[T]he doctrine of equitable estoppel 'cannot be . . . invoked to defeat the . . . enforcement of . . . ordinances, because of an error or mistake committed by one of its officers . . . which has been relied on by the third party to his detriment.'" *Id.*"

Recently, in Marzullo v. Kahl 366 Md. 158, 194-99 (2002), excerpt attached as Case Exh. C, the property owner made the estoppel argument, to wit, that it was "fundamentally unfair" to enforce the law because he had obtained a building permit and constructed his "reptile barn." In rejecting this argument, the Court again quoted Lipsitz at length and added an insightful discussion of Town of Berwyn Heights v. Rogers 228 Md. 571 (1962):

> "In *Town of Berwyn Heights v. Rogers,* 228 Md. 271, 179 A.2d 712 (1962), Phillip Rogers, a home builder, began construction of a residence in Berwyn Heights. Mr. Rogers had not started construction until he had received building permits from both the county's building inspectors and the Town of Berwyn Heights'[fn15] inspectors. The construction was in compliance with the permits; however, the Town of Berwyn Heights concluded that a mistake had been made in the issuance of the permits so that the residence was being built in violation of a zoning ordinance. The Town of Berwyn Heights filed suit to enjoin the construction of Mr. Rogers.
>
> Mr. Rogers alleged that the Town of Berwyn Heights was estopped from filing suit because it and the county had issued Mr. Rogers building permits, and Mr. Rogers had expended substantial amounts of money in partially constructing the residence. The Court held that:
>
> "Some authorities hold that the principle of estoppel does not apply against a city, but the majority rule is to the effect that the doctrine of estoppel

> in pais is applied to municipal, as well as to private, corporations and individuals, at least where the acts of its officers are within the scope of their authority and justice and right requires that the public be estopped. And it has been held that municipalities may be estopped by reason of the issuance of permits. However, the cases and text-writers very generally state that a municipality is not estopped to set up the illegality of a permit. And the issuance of an illegal permit creates no `vested rights' in the permittee. *We have held above that the permits issued to the appellee were in violation of the zoning ordinance; consequently they were unlawful and* Page 199 *did not estop the appellant [the Town of Berwyn Heights] from prosecuting this suit."*

Id. at 279-80, 179 A.2d at 716 (citations omitted) (emphasis added).

> While we are sympathetic to the plight in which respondent has found himself, we hold that the county is not estopped from enforcing the BCZR as it was applied by the Board of Appeals. We have held, generally, that permits that have been issued that are in violation of the zoning ordinances are unlawful and cannot be grounds for estopping a municipality from the enforcement of the ordinance. We stated in *Lipsitz* that "the doctrine of equitable estoppel cannot be here invoked to defeat the municipality in the enforcement of its ordinances, because of an error or mistake committed by one of its officers or agents which has been relied on by the third party to his detriment." *Lipsitz,* 164 Md. at 227, 164 A. at 746."

In light of the case law, there is no foundation here to support a good faith argument about "estoppel." The word "estoppel" is sometimes used loosely by property owners in a last ditch try for approval. The CBA should reiterate that these types of claims are not legitimate and are unacceptable. Where the facts and law do not support a petition, there is no excuse for an "estoppel" argument.

III. The Petition Fails to Satisfy Chesapeake Bay Critical Area Standards

BCZR 500.14 sets standards applicable to all zoning petitions in the Chesapeake Bay Critical Area. DEPRM must provide a recommendation describing how the proposed request would minimize adverse water quality impacts; conserve fish, wildlife and plant habitat; and be consistent with land use policies for the Critical Area.

The Petitioner has not addressed this issue. DEPRM has not made the required statutory recommendation. This failure is *vel non* a separate reason to deny the petition. See People's Counsel v. Beachwood 107 Md. App. 627, 659-64 (1995), cert. denied 342 Md. 472 (1996), excerpt attached as Case Exh. D.

In this connection, it is evident that the placement of four single-family dwellings on a waterfront property of .66 acres is an overcrowding of the land and inevitably adds unnecessary environmental stress to the bay. It is inconsistent with standards for Limited Development Areas. The GIS map also shows that most of the properties in the area have a single dwelling. Indeed, the usual zoning around the waterfront is more restrictive than D.R. 5.5. In contrast, the subject property is crowded. The 2108 Alma Avenue dwelling site was squeezed in next to the road.

Conclusion

After more than fifty years, the nonconforming use was overdue for termination. It does not belong there. Three dwellings on this small property are more than enough. The fourth straddling the road is inappropriate.

For all of the above reasons, the CBA must find, as a matter of law, that it is obligated to deny the Petition for Special Hearing.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. DeMilio

CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23 day of August, 2004, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed first class mailed, postage prepaid to J. CARROLL HOLZER ESQUIRE, 508 FAIRMOUNT AVENUE, TOWSON MD 21286, Attorney for Petitioner.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

TOWSON, MARYLAND 21204

TIMOTHY M. KOTROCO
DIRECTOR

BUILDING PERMIT

JOHN R. REISINGER
BUILDINGS ENGINEER

PERMIT #: B475788 CONTROL #: RA DIST: 15 PREC: 01
DATE ISSUED: 03/29/2002 TAX ACCOUNT #: 2100014182 CLASS: 36

PLANS: CONST PLOT R PLAT DATA ELEC NO PLUM YES
LOCATION: 2108 ALMA AVE
SUBDIVISION: WHISTLERS LAND COND

OWNERS INFORMATION
NAME: WHISTLER CORPORATION(HOWARD RAMSAY)
ADDR: 7613 OLD ROAD BAY FRONT 21219

TENANT:
CONTR: OWNER
ENGNR:
SELLR:
WORK: RAZE 1 OF 3 SFDS TO BE TORN DOWN DEBRIS TO BE HAULED TO APPROVED SANITARY LANDFILL IN ACCORDANCE W/ APPLICABLE BALTIMORE COUNTY SITE REGULATIONS SEWER TO BE CAPPED BUILT 1990'S 60X12=720SFT P466767 FINAL 11/21/01 PERMIT EXPIRES 90 DAYS FROM DATE OF ISSUE.
BLDG. CODE:
RESIDENTIAL CATEGORY: DETACHED OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: 3 SFDS
EXISTING USE: 4 SFDS

TYPE OF IMPRV: WRECKING
USE:
FOUNDATION: BASEMENT:
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 0000.00 X 0000.00
FRONT STREET
SIDE STREET
FRONT SETB:
SIDE SETB:
SIDE STR SETB
REAR SETB:

Exhibit A

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.

APPLICATION FOR PLUMBING PERMIT

PERMIT #: P-46767 DIST: 15 PREC: 00

LOCATION: 2108 ALMA AVE
SUBDIVISION:
TAX ASSESSMENT #: 2100014185

OWNERS INFORMATION
NAME: RAMSEY, HOWARD
ADDR:

APPLICANT INFORMATION
NAME: HOWARD F. CARTER
COMPANY: HOWARD N. CARTER AND SONS
ADDR1: 7300 NORTH POINT RD.
ADDR2: BALTIMORE, MD 21219
PHONE #: 410-477-4800 LICENSE #: 87

NOTES
FINALED IN RM. 100 11/21/01. RSD

SEWAGE DISPOSAL: METRO
TYPE OF BUILDING: SFD OLD OR NEW (O OR N): OLD
LOT #: BLOCK: SECTION:
TOWN OR VICINITY: EDGEMERE NO. OF GAS METERS:

GAS PERMIT:	RANGE: BTU	WATER HEATER BTU	FURNACE BTU	OTHERS BTU	SIZE OF PIPE

CAUTION: PLASTIC WATER SERVICE LINES WILL REQUIRE A REVIEW OF THE ELECTRICAL SYSTEM TO ASSURE PROPER GROUND. CONTACT AN ELECTRICAL CONTRACTOR.

CHECK HERE	WORK BEING PERFORMED	NO. OF FIXTURES	CHARGES
X	SEWER CAP OFF		17.00
	TOTALS		17.00

JOB NUMBER: DRAWING NUMBER:
REMARKS VLC
FINALED IN RM. 100 11/21/01. RSD

SEWER LOCATION: DEPTH LINEAL FEET OF
Y BRANCH IS DEPTH HOUSE CONNECTION
PRIVATE DISPOSAL:

DATE APPLIED 11/01/2001 INSPECTOR INITIALS: LSB
FEE: $17.0 PAID: $17.0 RECEIPT #:A439306
PAID BY: APP.

(I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIREDIN SPECTIONS)

Department of Permi
Development Management

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

(Ric' Wisdom) Rm 100

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

ORIGINAL 887-3391
CORESPONDENCE

October 23, 2003

(STOCK PLANS
887-3900
PERMITS
SITE PLAN)

Howard and Jan Ramsay
7613 Old Road Bay
Edgemere, Maryland 21219

Dear Mr. and Mrs. Ramsay:

Re: 2108 Alma Ave, Zoning Verification, Election District 15

The subject property is zoned DR-5.5 (Residential Density-5.5 houses per acre). I understand from Ms. Chris Barkley, the realtor, that there were 4 houses on one lot. There was a Zoning Special Hearing in March 1989 to approve a non-conforming use of the four dwellings. It was granted subject to several conditions, including Section 104.1, which states that discontinuation of a nonconforming use for a year or more ends its nonconforming status, and 104.2 which says that a structure damaged to any extent or destroyed by fire or other casualty may be restored within 2 years of such destruction, but may not be enlarged. If you can show that the building in question was razed as a result of such a casualty, you have until November 20, 2003 to begin the rebuilding process.

Enclosed are copies of the order for zoning case # 89-343-SPH, a portion of zoning map #SE 7-H, and a portion of the case file's exhibit #1 showing the site plan of the property at the time the hearing was approved.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

John R. Alexander
Planner II
Zoning Review

Enclosure

c: Letter File

Exhibit B

JDA
Consulting Engineers
Established 1975

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

Attention: Carl Richards, Assistant Director

Re: 2108 Alma Ave, Zoning Verification, Election District 15 - Extension

Dear Carl:

Thank you for the telephone meeting that we had on November 11, 2003. Please accept this letter to verify that Jack Dale Associates, Consulting Engineers will be assisting Howard and Jan Ramsey and their realtor, Chris Barkley in securing building permits for the subject lot on 2108 Alma Avenue. Prior to the engineering work starting, we thought it would be in the best interest of the owner to wait until the special hearing was completed; granting a 12-months extension to get the permits, construction, and final use and occupancy for this lot.

Attached to this letter are copies of the permit drawings from 1989 that were used to construct the other three houses on the lot. If you remember in our discussion, the last lot is vacant because the original house was torn down for structural reasons; the owners lack of finances prevented beginning new construction on that lot within the two year period noted in zoning case 89-343-SPH. The lack of finances has resulted in the owner needing to sell the property and obtain this extension primarily for the benefit of the new owners who are under contract at this time.

Ms. Barkley and her clients have attempted to file a building permit in advance of the special hearing, however, there isn't sufficient time for the engineering to be completed for the flood plain elevations and the foundation drawings to current standards thus, we wait the favorable decision of the zoning extension prior to filing the permit.

Sincerely,

Jack Dale Associates, PC

Edward C. Koplin, PE, CEM
MD Professional License # 20782

Exhibit C

Jack Dale Associates, P.C.
7110 Belair Road, Suite 200 Baltimore, MD 21206-1125 410-665-9400 Fax: 410-665-9402 www.jackdale com

260 Md. 206

CANADA'S TAVERN, INC. et al.

v.

TOWN OF GLEN ECHO.

No. 150.

Court of Appeals of Maryland.

Dec. 16, 1970.

Action challenging certificate of occupancy to use building in single-family residential zone for nonconforming restaurant purposes. The Department of Inspections and Licenses issued certificate of occupancy. The County Board of Appeals affirmed, and the town appealed. The Circuit Court for Montgomery County, *Plummer M. Shearin, J.*, reversed, and appeal was taken. The Court of Appeals, McWilliams, J., held that where operation of building in single-family residential zone for nonconforming restaurant purposes had ceased for more than six months, nonconforming use had been abandoned within meaning of ordinance defining abandoned as cessation of nonconforming use for period of six months or more, *notwithstanding that owner* had not intended to abandon use and that interregnum was merely for purpose of finding suitable successor to prior tenant.

Affirmed.

Barnes, J., dissented and filed opinion

1. Zoning ⇐337

Under zoning ordinance providing that no nonconforming use, once abandoned, shall thereafter be reestablished with "abandoned" defined as cessation of a nonconforming use for a period of six months or more, extinguishment of nonconforming use requires only cessation of such use for a period of six months or more and does not require showing of accompanying intention to abandon.

2. Zoning ⇐337

Where operation of building in single-family residential zone for nonconforming restaurant purposes had ceased for more than six months, nonconforming use had been abandoned within meaning of ordinance defining abandoned as cessation of nonconforming use for period of six months or more, notwithstanding that owner had not intended to abandon use and that interregnum was merely for purpose of finding suitable successor to prior tenant.

G. Vann Canada, Jr., Rockville (Shaffer, McKeever & Fitzpatrick and Arthur v. King, Rockville, on the brief), for Canada's Tavern, Inc.

Philip J. Tierney, Asst. County Atty. (David L. Cahoon, County Atty., and Alfred H Carter, Deputy County Atty., Rockville, on the brief), for Montgomery County.

Rourke J. Sheehan, Rockville (Gary H. Simpson, Rockville, on the brief), for appellee.

Argued before HAMMOND, C. J., and BARNES, McWILLIAMS, SINGLEY, SMITH and DIGGES, JJ.

McWILLIAMS, Judge.

The demise of a nonconforming use and appellants' efforts to resurrect it require us to construe Section 111–57(c) of the Montgomery County Code (1965), the pertinent part of which is:

"* * * No nonconforming use, once abandoned, shall thereafter be re-established. For the purpose of this section, 'abandoned' shall be defined as the *cessation* of a nonconforming use for a period of six months or more" (Emphasis added.)

The facts are simple enough and they seem not to be in dispute.

[1,2] For an unstated number of years Mrs. Sally Peters has been the owner of No. 2 Harvard Street in the Town of Glen Echo, which is on the north bank of the Potomac River about two and one-half miles northwesterly from the northwestern boundary of the District of Columbia. Her lot is improved by a frame building in which for a period prior to 1968 she operated, as a nonconforming use in an R–60 (single family residential) neighborhood, an establishment known as Canada's Restaurant. An injury made it impossible for her to work so in December of 1967 she leased the premises to James Dozier who continued the operation of the restaurant. Responding to public pressure the Board of License Commissioners refused to renew Dozier's liquor license which expired on 30 April 1968. Understandably bitter at this turn of events Dozier shut up shop and retired from the scene. Efforts to find a suitable successor to Dozier were unproductive until the early spring of 1969 when the appellant Canada's Tavern, Inc. (Canada), became the lessee. It is agreed, however, that during the interregnum, no use whatever was made of the premises. Its requirements having been satisfied and the approval of the County Attorney having been obtained the Department of Inspections and Licenses, on 25 April 1969, issued to Canada a certificate of occupancy.[1] Promptly thereafter the appellee, the Town of Glen Echo (Town) filed its appeal with the County Board of Appeals (Board), charging a misinterpretation of Section 111–57(c). The hearing took place on 17 July 1969. On 23 September the Board announced its decision, a portion of which follows:

"Based on the testimony and exhibits of record, including the County Attorney's memorandum, Exhibit 14, the Board finds that the only issue left before it is whether or not the non-conforming use had been terminated at the time the occupancy permit was issued Based on the evidence, the Board finds that the owner had diligently attempted to find a tenant to continue the operation of the premises as a restaurant. The restaurant remained as it had been without any change and no intention had been demonstrated that any other use would be made of the property. The only changes were alterations to comply with the safety standard, which would be permitted under the non-conforming use status. The Board cannot find that the Chief of the Building Inspection, Department of Inspection and Licenses, erred in granting the occupancy permit and hereby *sustains* his decision in issuing the permit."

The Town appealed to the Circuit Court for Montgomery County and shortly thereafter Montgomery County (County) intervened. The trial judge, Shearin, J., reversed the action of the Board He rejected the contention of Canada and the County "that the extinguishment of a nonconforming use requires not only a cessation of such use for a period of six months or more, but an accompanying *intention* to abandon." Both Canada and the County urge us to reverse Judge Shearin and to reinstate the decision of the Board but we are satisfied that he reached the correct result.

In the appellants' argument there is discernible but one basic concept, i. e., when the District Council enacted Section 111–57 (c) it did not really mean what it said. We are prompted to paraphrase the deathless dictum of Lord Mildew—if the Council did not mean what it said, it should have said so.[2] We think the Council not only meant what it said but that the language it chose is clear and unequivocal.

1. The Town, in a footnote to its "Statement of Facts" indicates that Canada opened *for business on 25 April 1969, the* day the certificate of occupancy was issued, that it closed again around 1 September, and that on 4 November the restaurant was reopened under a new name.

2. A. P Herbert, Uncommon Law 192 (1st ed. 1936). Lord Mildew is the mythical judge.

Case Exhibit A

Nevertheless we shall consider the appellants' sophistic endeavors.

They hark back to Landay v. Board of Zoning Appeals, 173 Md. 460, 196 A. 293 (1938), where we said that *abandonment* "depends upon the occurrence of two, and only two, factors: one, an *intention* to abandon or relinquish; and, two, some overt *act*, or some failure to act * * *." (Emphasis added.) And, they say, we have indicated our approval of the *Landay* definition of *abandonment* in Dorman v. Mayor and City Council of Baltimore, 187 Md. 678, 51 A.2d 658 (1947), Vogl v. Mayor and City Council of Baltimore, 228 Md. 283, 179 A.2d 693 (1962); Stieff v. Collins, 237 Md. 601, 207 A.2d 489 (1965), and Harris Used Car Co. v. Anne Arundel County, 257 Md. 412, 263 A.2d 520 (1970). They continue with the citation of McCoy v. City of Knoxville, 41 Ill.App.2d 378, 190 N.E.2d 622 (1963), which held that *discontinuance* means *abandonment*, adding, in support of *McCoy*, Smith v. Howard, 407 S.W.2d 139 (Ky.1966), and Bither v. Baker Rock Crushing Co., 249 Or. 640, 438 P.2d 988 (1968). They go on to argue that since we have used *discontinuance* and *cessation* synonomously, *Landay*, *supra*, 173 Md. at 467, 196 A. at 296 and since *abandonment*, *discontinuance* and *cessation* are "cognative" (we shall assume they mean *cognate*) terms, the "existing legal requisites of *abandonment* must be merged into any general definition of [any one of] the [three] words," thus compelling the conclusion that *cessation* cannot be used without connoting intent. We are signally unimpressed with this forensic foray. Even a cursory reading of *Landay* discloses its expressed inapplicability to the case at bar. Speaking for the Court, Judge Offutt said:

"Since the ordinance provides one way, and only one way, in which a nonconforming use may be lost, to supply another way in which such a right may be lost would be to do what the Mayor and City Council alone was authorized to do, but which it refrained from doing. *Since, therefore, the ordinance does not provide that mere cessation of the nonconforming use shall prevent its resumption, this court is not authorized to give to such cessation that effect.*" *Id.* at 466–467, 196 A. at 296 (Emphasis added.)

* * * * * *

"The reasoning as well as the conclusions in these cases is consistent with the principle that, *unless so stated in the statute*, cessation or discontinuance of a non-conforming use without the substitution of another use, or without evidence of an intent to abandon the nonconforming use, will not prevent its resumption." *Id.* at 469, 196 A. at 297. (Emphasis added.)

Appellants shrug off the explicit language of Section 111–57(c) with the argument that it was enacted only for the purpose of clearing up the "time" ambiguities created by *Landay* and *Dorman*. This seems most unlikely for, if true, then, in effect, what the Council said was " 'abandoned' shall be defined as the * * * [abandonment] of a nonconforming use for a period of six months or more." We think the Council, having in mind a larger purpose, intended to align itself with those local governments which have found it desirable to delete the factor of intent in respect of the abandonment, discontinuance or cessation of nonconforming uses rather than continuing to run the gamut of its judicial determination in a succession of infinitely variable factual situations.[3]

3 The legislative history of Section 111–57(c) seems to support the view we have expressed. The earliest version, enacted in September 1941, appears in the 1950 Montgomery County Code as Sec. 176–10. It provided that "upon * * * discontinuance * * * for a period of one year * * * [the use] shall terminate." Following a 1953 amendment it appears in the 1955 Code as Section 107–47(c), which provided that "no nonconforming use, once abandoned, shall thereafter be re-established" and defining "abandonment * * * as the *cessation*" of the use '*for one month or more*.' (Emphasis added.) The present section, 111–57(c), is a re-enactment (without change) of Section 104–48(c) of the 1960 code.

4. It is interesting to note the diverse approaches other counties have taken in attacking nonconforming uses which have ceased for one reason or another. This diversity is all the more reason for reading such ordinances literally without attempting to extract strained interpretations. "[I]n the case of the *abandonment* of such non-conforming use for the period of one year, the right to continue such original non-conforming use shall cease." Code of Anne Arundel County, § 13–310 as amended Supp. #5 (1969). "[O]n any *abandonment* or *discontinuance* of such non-conforming use for a period of one year or more * * * the right to continue or resume such non-conforming use shall terminate." Baltimore County Zoning Regulations (1955) § 104.1. "No building, structure or premises where a non-conforming use *has ceased* for six (6) months or more shall thereafter be used * * *." Carroll County Zoning Ordinance § 4.3(d). "No building structure or premises where a non-conforming use *has ceased* for two years or more shall again be put to a non-conforming use." Code of Frederick County (1959) as amended § 40–124. "A non-conforming use * * * which shall *remain idle* and *unused* for a continuous period of three years *shall be considered abandoned* as a non-conforming use * * *." Zoning Regulations of Howard County (1961) as amended § 20.05. "No non-conforming use may be re-established * * * where such non-conforming use *has been discontinued* for a period of at least two years." Zoning Ordinance of Prince George's County (1949) as amended § 12.41(b). (All emphasis added.)

It is suggested that the use of both *abandonment* and *cessation*, in the same section, creates an ambiguity. We can think of no reason why this should be so. For instance, there is certainly no ambiguity in the Baltimore City ordinance which provides that "such discontinuance for [six consecutive months] * * * shall constitute an abandonment * * * regardless of any reservation of an intent not to abandon same or of intent to resume actual operations." We think Section 111–57(c), while less explicit, is not less clear.[4]

Order affirmed. Appellants to pay the costs.

BARNES, Judge (dissenting):

I dissent because, in my opinion, the majority has misinterpreted § 111–57(c) of the Montgomery County Code, 1965, and has not perceived the correct legislative intent of that statutory provision.

In seeking to ascertain the legislative intent in a statutory enactment, we properly assume that the legislators are familiar with the existing law—both statutory and decisional—and enact the legislation within the framework of that law. Giant Food, Inc. v. Gooch, 245 Md. 160, 225 A.2d 431 (1967); St. Joseph Hospital v. Quinn, 241 Md. 371, 216 A.2d 732 (1966); Gibson v. State, 204 Md. 423, 104 A.2d 800 (1954).

Since the landmark case in regard to abandonment of nonconforming uses, Landay v. Board of Zoning Appeals, 173 Md. 460, 196 A. 293 (1938), and continuing through the decision of the Court in Harris Used Car Co. v. Anne Arundel County, 257 Md. 412, 263 A.2d 520 (1970), there has been no doubt that such abandonment consists of two elements (1) an intention to abandon or relinquish and (2) some overt act, or some failure to act, which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment. It is in this judicial setting that § 111–57(c) was enacted.

With this well established law in mind, Subsection (c) should be carefully considered. It provides:

(c) No building in which a nonconforming use has been changed in whole or in part to a more restricted use shall again be devoted to a less restricted use. No nonconforming use, once abandoned, shall thereafter be re-established. For the purpose of this section, 'abandoned'

see no error in these findings.[3] Accordingly, the court correctly directed Ms. Droney to transfer the home in its 1992 Order; the court's finding of contempt in the 1994 Order, based on Ms. Droney's failure to comply, was not an abuse of discretion.

III.

[13] Ms. Droney contends that even if the court did not err in finding that the term "real estate" encompassed the home, the court lacked the statutory authority to order her to transfer her interest in property, either as part of a divorce decree or in the enforcement thereof. Under Md.Fam.Law Code Ann., § 8–202(a) (1991), the court may determine ownership of disputed property when the court grants an absolute divorce, but the statute expressly denies the court the power to transfer property, other than money, as part of an award. *See also, Kline v. Kline,* 93 Md.App. 696, 703, 614 A.2d 984 (1992). At the same time, the court can merge the terms of a deed, agreement, or settlement made between the parties during the divorce as a part of the divorce decree. Md.Fam. Law Code Ann., § 8–105(a); *Goldberg v. Goldberg,* 290 Md. 204, 210 n. 6, 428 A.2d 469 (1981). Once the terms are so merged, the court has the power to enforce those terms using the contempt power. Md.Fam.Law Code Ann., § 8–105(a);

3. In addition, our decision finds logical support in the area of lawful warrantless searches of vehicles under the Fourth Amendment of the United States Constitution. In *California v. Carney,* 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985), the Supreme Court held that the mobile home in question was sufficiently mobile that it fell within the "automobile exception" to the prohibition on warrantless searches, even if it was being used primarily as a residence and not as a means of transportation. *Id.* at 393, 105 S.Ct. at 2070. The Court suggested, however, that the same home, on blocks and connected to utility lines in a mobile home park, would not have been subject to a warrantless search, because the critical element of mobility would be lacking. *Id.* at 394 n. 3, 105 S.Ct. at 2071 n. 3. *See also, Doering v. State,* 313 Md. 384, 398–99, 545 A.2d 1281 (1988) (interpreting *Carney,* defendant's bus, which had been converted into lodging, was subject to warrantless search as it had all of its tires fully inflated, had all its windows intact, had all its lights in apparently functional condition, and was near a road).

Md.Rule 2–648; *Mendelson v. Mendelson,* 75 Md.App. 486, 497–98, 541 A.2d 1331 (1988).

Ms. Droney relies on the case of *McAlear v. McAlear,* 298 Md. 320, 469 A.2d 1256 (1984) for the proposition that contempt may not be used to enforce a "property disposition award." In *McAlear,* the divorced wife sought to have her ex-husband held in contempt for his failure to pay the monetary award specified in the judgment of absolute divorce. The Court held that, unlike alimony, a monetary award in a divorce case constitutes a "debt," and as the Maryland Constitution, Art. III, § 38 forbids incarceration for the failure to pay a debt, contempt was not an available method of enforcement. *Id.* at 349–52, 469 A.2d 1256.

Ms. Droney's reliance on *McAlear* is inapposite. The Court did not consider Fam.Law, § 8–105(a), and we find nothing in *McAlear* that approaches the question of whether a court may use contempt to enforce the lawful terms of its own orders. Given the clear statutory authority to merge the terms of an agreement into a judgment of divorce and to enforce such terms with contempt, the court did not err in seeking to enforce the terms of the Judgment by ordering Ms. Droney to transfer her ownership of the Property to Mr. Droney.

AFFIRMED. COSTS TO BE PAID BY APPELLANT.

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651 A.2d 424

David CROMWELL, et al.

v.

Arthur Thomas WARD, III.

No. 617, Sept. Term, 1994.

Court of Special Appeals of Maryland.

Decided Jan. 4, 1995.

The Circuit Court, Baltimore County, Lawrence Daniels, J., affirmed order of board of appeals granting height variance

Case Exhibit B

for accessory building already built by owner. Appeal was taken. The Court of Special Appeals, Cathell, J., held that: (1) no variance was appropriate where property was not shown to be unusual or unique from surrounding properties before variance based on practical difficulty or unreasonable hardship was sought; (2) landowner's self-created hardship arising from construction of accessory building before variance was sought was not grounds for grant; and (3) approval of building permit for accessory building did not support grant of variance sought.

Reversed.

1. Zoning and Planning ⇐461

City was not estopped from refusing to grant variance from height restriction on auxiliary building merely because owner submitted and obtained construction permit, at least where owner's plan's elevation schematics contained neither elevation dimensions nor scale and elevation was not stated; while zoning inspectors might have been able to extrapolate dimensions from other schematics, they were not required to do so in light of owner's affirmative statement in application of compliance with zoning requirements. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

2. Zoning and Planning ⇐496

Under law on variances in Maryland and under Baltimore County's charter and ordinance, property's peculiar characteristics or unusual circumstances relating only and uniquely to that property must exist in conjunction with ordinance's more severe impact on specific property because of property's uniqueness before any consideration will be given to whether requisite practical difficulty or unnecessary hardship exists. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

3. Zoning and Planning ⇐497

Practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. Code

1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

4. Zoning and Planning ⇐496

Mistake of county official cannot be the "practical difficulty" unique to subject property required to authorize grant of variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

5. Zoning and Planning ⇐503

Granting of variance from height restrictions on auxiliary building was arbitrary and illegal where subject site was not in any way peculiar, unusual or unique when compared to other properties in neighborhood and thus was not disproportionately affected by height restriction; self-created hardship arising from owner's failure to disclose height dimensions in applying for permit and construction of building in nonconformity were self-imposed or created hardships that could not support variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

Michael Paul Smith (Thomas G. Bodie and Bodie, Nagle, Dolina, Smith & Hobbs, P.A., on the brief), Towson, for appellants.

Newton A. Williams (Nolan, Plumhoff & Williams, Chtd., on the brief), Towson, for appellee.

Argued before WENNER, CATHELL and MURPHY, JJ.

CATHELL, Judge.

Appellant, David Cromwell, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas Ward, III. Appellant poses the following questions:

I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances

noted in *AD + Soil, Inc. v. County Comm'rs*, 307 Md. at 340, 513 A.2d 893:

> The essence of AD + Soil's argument ... is that the setback requirements ... would cause ... unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of these local requirements.... The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted ... and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals*, 186 Conn. 32, 438 A.2d 1186, 1190 (1982) (" '[S]elf-inflicted or self-created hardship ... is never considered proper grounds for a variance.' ... '[W]here the applicant ... creates a nonconformity, the board lacks power to grant a variance.' ") (citations omitted); *Volkman v. City of Kirkwood*, 624 S.W.2d 58 (Mo.App.1981); *Matter of Schrader*, 660 P.2d 135 (Okl. 1983); *Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals*, 279 S.C. 598, 310 S.E.2d 438 (App.1983); *McClurkan v. Board of Zoning Appeals*, 565 S.W.2d 495 (Tenn.1977); *Steele v. Fluvanna County Bd. of Zoning Appeals*, 246 Va. 502, 436 S.E.2d 453, 456 (1993) ("[T]he hardship, if any, was self-inflicted. The placement of the improvements ... was within the control of the Garretts and their contractor, Raintree."). *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Granting of the Permit

In *Francis v. MacGill*, 196 Md. 77, 75 A.2d 91 (1950), a property owner sought equitable injunctive relief. The facts were that while the enactment of a zoning ordinance was pending, the property owner obtained a building permit to construct that which would not be permitted after the enactment of the ordinance. After the ordinance was enacted, the owner constructed, pursuant to the permit, a building that had become prohibited by reason of the passage of the ordinance. The Court noted:

> "Adoption of zoning ordinance *ipso facto* revokes permit for construction ... where no construction has begun."
>
> ... They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

196 Md. at 85, 75 A.2d 91 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro*, 187 Md. 623, 634, 51 A.2d 273 (1947), *overruled on other grounds in Nutter v. Non-Profit Housing Co.*, 230 Md. 6, 185 A.2d 360 (1962), where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit ... does not create a vested right, or estop [9] the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of County Comm'rs v. Snyder*, 186 Md. 342, 347, 46 A.2d 689 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

In the mandamus case of *County Comm'rs v. Ward*, 186 Md. 330, 340, 46 A.2d 684 (1946), the Court held:

> The Board ..., as an administrative body, was bound to follow the regulations it adopted, in the exercise of ...

9. The applicability of the "doctrine of zoning estoppel" has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council*, 96 Md.App. 526, 625 A.2d 424 (1993), *rev'd in part*, 334 Md. 499, 639 A.2d 1070 (1994).

delegated legislative power. The fact that it might have rezoned ... does not alter its obligation to adhere to existing regulations....

In the case of *Lipsitz v. Parr*, 164 Md. 222, 164 A. 743 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

> A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law.... [T]he ordinance forbade the officials ... to grant the permit which the plaintiff asked and obtained....
>
> ... [I]t was therefore unlawful for the officers ... to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued ... does not ... prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality.... *Every one dealing* with the officers and agents of a municipality *is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled* by their acts when done without legal authority.
>
> So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act ... it is not estopped by the unauthorized or wrongful act of its officer ... in issuing a permit that is forbidden by the explicit terms of an ordinance.... *Valentine v. Rds. Directors*, 146 Md. 199, 206 [126 A. 147] [(1924)].... [Citations omitted, emphasis added.]

164 Md. at 227–28, 164 A. 743.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.*, 313 Md. 413, 545 A.2d 1296 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow Shopping Center*, 264 Md. 481, 287 A.2d 242 (1972), a case of a timely appeal of the denial of a building permit. In *Inlet Associates*, the Court opined that "[c]onsequently, '[e]veryone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.'" 313 Md. at 437, 545 A.2d 1296. The Court added: "[T]he doctrine of equitable estoppel 'cannot be ... invoked to defeat the ... enforcement of ... ordinances, because of an error or mistake committed by one of its officers ... which has been relied on by the third party to his detriment.'" *Id.*

[4] Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the subject property required in order to authorize the grant of the variance sought and obtained by Ward.

The authorities elsewhere are in accord.

> The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding disregards the principal that hardship relates to the special character of the *land*, not to the circumstances of the *owner*.

Richardson, 455 A.2d at 1062.

> [R]elator argues the Board should be estopped from denying the height variance because a city building inspector visited the premises several times and observed the construction taking place but made no complaint....
>
> In any case there is no authority on the part of a building inspector to grant a variance....

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La.App. 4th Cir.1970). *See also Klanke v. Zoning Bd. of Adjustment*, 83 Pa.Cmwlth. 441, 477 A.2d 907, 909 (1984), and *Walkingstick, supra; Xanthos, supra; and St. Clair, supra.*

783 A.2d 169

Mary Pat MARZULLO et al.

v.

Peter A. KAHL.

No. 10, Sept. Term, 2001.

Court of Appeals of Maryland.

Oct. 12, 2001.

Landowner sought review of county board of appeals' decision that his business of breeding, raising, and selling snakes and reptiles was not a farming activity and was not a permitted use in zone implementing resource conservation and watershed protection. The Circuit Court, Baltimore County, John Grason Turnbull II, J., reversed. Neighbor and county attorney appealed. The Court of Special Appeals, 135 Md.App. 663, 763 A.2d 1217, affirmed. Parties petitioned for a writ of certiorari. The Court of Appeals, Cathell, J., held that landowner's business was not a permitted use.

Reversed and remanded with directions.

1. Zoning and Planning ⚷605

On appellate review of zoning case, Court of Appeals would take into consideration county board of appeals' expertise and would afford appropriate deference to board's decision that landowner's business of breeding, raising, and selling snakes and reptiles was not a farming activity and was not a permitted use in a residential resource conservation and watershed protection zone.

2. Zoning and Planning ⚷279

Landowner's business of breeding, raising, and selling snakes and reptiles was not "commercial agriculture" within scope of zoning regulation's definition of "farm,", and thus, it was not a permitted use in zone implementing resource conservation and watershed protection; legislative intent suggested that drafters of regulation intended "animal husbandry" aspect of "commercial agriculture" to relate to production and care of domestic animals, and landowner's business involved wild animals.

3. Statutes ⚷174

Courts do not set aside common experience and common sense when construing statutes.

4. Statutes ⚷181(2)

Absurd statutory constructions are to be avoided.

5. Zoning and Planning ⚷465

Landowner did not have a vested right to conduct on his property the business of breeding, raising, and selling snakes and reptiles, which was not a permitted use in zone implementing resource conservation and watershed protection; although landowner obtained a permit and completed substantial construction of business building, there was no change in zoning law and permit was improperly issued.

6. Zoning and Planning ⚷461

Generally, in the absence of bad faith on the part of the remitting official, applicants for permits that involve the official's interpretation of zoning laws accept the afforded interpretation at their risk.

7. Zoning and Planning ⚷762

County was not equitably estopped from preventing landowner from conducting on his property the business of breeding, raising, and selling snakes and reptiles, which was not a permitted use in zone implementing resource conservation and watershed protection; even though county official granted landowner a construction permit, the permit was issued in violation of zoning ordinances.

Carole S. Demilio, Deputy People's Counsel, and Peter Max Zimmerman, People's Counsel, Office of People's Counsel for Baltimore County, Towson; (J. Carroll Holzer of Holzer & Lee, Towson, all on brief), for petitioners/cross-respondents.

Case Exhibit C

Michael J. Moran (Law Offices of Michael J. Moran, P.C., Towson); John B. Gontrum (Romadka, Gontrum & McLaughlin, P.A., Baltimore), all on brief, for respondent/cross-petitioner.

Argued before BELL, C.J., and ELDRIDGE, RAKER, WILNER, CATHELL, HARRELL and BATTAGLIA, JJ.

CATHELL, Judge.

Peter A. Kahl, respondent, used a parcel of land that was zoned R.C.4 for his residence and to operate Peter Kahl Reptiles, Inc. Mary Pat Marzullo and the People's Counsel for Baltimore County, petitioners, filed a Petition for a Special Hearing before the Zoning Commissioner of Baltimore County for the determination of whether an R.C.4 zone permits respondent to conduct his business—the breeding, raising, and selling of reptiles. The Zoning Commissioner determined that respondent's use was permitted in an R.C.4 zone.

Petitioners appealed to the Baltimore County Board of Appeals (hereinafter Board of Appeals). The Board of Appeals determined that respondent was not permitted to operate Peter Kahl Reptiles, Inc. in an R.C.4 zone. Respondent filed a Petition for Judicial Review in the Circuit Court for Baltimore County. The Circuit Court reversed the decision of the Board of Appeals, finding that respondent's business was a farming activity that was permitted by right in an R.C.4 zone.

Petitioners appealed to the Court of Special Appeals. The Court of Special Appeals affirmed the decision of the Circuit Court for Baltimore County (*Marzullo v. Kahl*, 135 Md.App. 663, 763 A.2d 1217 (2000)). Petitioners filed a Petition for Writ of Certiorari and respondent filed an Answer and Conditional Cross Petition for Writ of Certiorari. We granted both petitions. Petitioners presented two questions for our review:

1. Whether the Court of Special Appeals erred in construing the BCZR [Baltimore County Zoning Regulations] to permit breeding of snakes under an expanded definition of "farm" as opposed to the specific definition of "animal boarding place[?]"

2. Whether the Court of Special Appeals erred in failing to give deference to the expertise of the County Board of Appeals in applying the BCZR pursuant to *Board of Physician v. Banks*, 354 Md. 59, 729 A.2d 376 (1999) as suggested by Judge Karwacki in his Dissenting Opinion[?]

Respondent presented two questions in his Conditional Cross Petition for our review:

1. Has the landowner acquired a vested right, pursuant to either the common law or local ordinance, to use the property to raise, breed and keep reptiles or snakes?

2. Is the County estopped from preventing the use of the property to raise, breed and keep snakes or reptiles?

We hold that the Circuit Court and the Court of Special Appeals failed to afford the findings of the Board of Appeals the proper deference when those courts held that the raising, breeding, and keeping of snakes and reptiles was a "farm" under the Baltimore County Zoning Regulations. Respondent's business was a use which is prohibited in an R.C.4 zone. We also hold that respondent has not acquired a vested right to conduct his business on the property and that the County is not estopped from preventing the use of the property to raise, breed, and keep snakes and reptiles.

I. Facts

In 1991, respondent purchased a parcel of land to use as his residence. When respondent moved into the residence he used part of the residence to engage in his hobby of herpetology.[1] Specifically, respondent was engaged in the raising and breeding of pythons and boas.[2] Respondent's hobby eventually grew into a business and to accommodate its growth and to provide a proper facility for the care of the snakes, respondent

1. Herpetology is defined as "the branch of zoology dealing with reptiles and amphibians." *The Random House Dictionary of the English Language* 666 (Jess Stein ed., The Unabridged Edition, Random House 1983).

2. Both boas and pythons are members of the family *Boidae* and are large non-venomous snakes that kill their prey by constriction.

[6] Respondent did not satisfy the first prong because his permit was not proper. Additionally, he was not being subjected to a subsequent change in the zoning regulations. Generally, in the absence of bad faith on the part of the remitting official, applicants for permits involving interpretation accept the afforded interpretation at their risk. Therefore, respondent has not obtained a vested right to conduct his business on the property.

D. Equitable estoppel

[7] We examined the doctrine of equitable estoppel and its application against a municipality in *Inlet Associates v. Assateague House Condominium Association*, 313 Md. 413, 545 A.2d 1296 (1988), when we stated that:

"There is no settled rule in this country as to when, and under what circumstances, equitable estoppel is available against a municipal corporation. *Permanent Fin. Corp. v. Montgomery Cty.*, 308 Md. 239, 518 A.2d 123 (1986). Our cases have continually applied the definition of equitable estoppel set forth in 3 J. Pomeroy, *Equity Jurisprudence* § 804 (5th ed. 1941) as follows:

'Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might have otherwise existed, either of property, or contract or of remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.'

. . .

Unlike *Permanent Fin.*, the present case does not turn on the ambiguity vel non of a county ordinance which was subject to two reasonable interpretations. Rather, we are now considering whether a municipality may be estopped when its city council, in clear violation of a fundamental charter requirement that it act by ordinance, with all the

deliberate safeguards attendant upon the legislative process, purports to bind the municipality through passage of a simple resolution which is neither subject to executive approval nor veto nor the public right of referendum. Of course, no principle is better settled than that persons dealing with a municipality are bound to take notice of limitations upon its charter powers. *See City of Hagerstown [v. Long Meadow Shopping Center], supra*, 264 Md. [481] at 493, 287 A.2d 242; *Hanna v. Bd. of Ed. of Wicomico Co.*, 200 Md. 49, 57, 87 A.2d 846 (1952); *Gontrum v. [Mayor and] City [Council] of Baltimore*, 182 Md. 370, 375, 35 A.2d 128 (1944 [1943]). Consequently, '[e]veryone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.' *Lipsitz v. Parr, supra*, 164 Md. [222] at 228, 164 A. 743. *See also Berwyn Heights, supra*, 228 Md. at 279, 179 A.2d 712. Therefore, the doctrine of equitable estoppel 'cannot be . . . invoked to defeat the municipality in the enforcement of its ordinances, because of an error or mistake committed by one of its officers or agents which has been relied on by the third party to his detriment.' *Lipsitz*, 164 Md. at 228, 164 A. 743. In the same vein, McQuillin, *supra*, § 29–104c states that estoppel cannot make lawful a municipal action which is beyond the scope of its power to act or is not executed in compliance with mandatory conditions prescribed in the charter. In other words, the doctrine of equitable estoppel cannot be invoked to defeat a municipality's required adherence to the provisions of its charter simply because of reliance upon erroneous advice given by an official in excess of his authority. *See [Mayor and] City [Council] of Baltimore v. Crane, supra*, 277 Md. [198]at 206, 352 A.2d 786. When, as here, it is a patent violation of one of the most fundamental provisions of a municipal charter—that its legislative body, when required to act in a legislative capacity, do so only by

ordinance—it cannot matter that a party relies upon erroneous official advice to its detriment."

Id. at 434–37, 545 A.2d at 1307–08 (alteration in original).

Respondent contends that Baltimore County should be estopped from preventing him from using his property to raise, breed, and keep reptiles and snakes. Respondent states that it would be "fundamentally unfair" to not allow him to use the property for his business after he obtained permit approval and had substantially constructed the reptile barn before he knew the petitioners might file for a special hearing. Respondent contends that he relied on the permit approval to order materials and enter into a contract for construction.

In *Lipsitz v. Parr*, 164 Md. 222, 164 A. 743 (1933), Mr. Lipsitz brought a proceeding against Mr. Parr, the buildings engineer of the Mayor and City Council of Baltimore City, and the named members of the board of zoning appeals. Mr. Lipsitz had obtained a permit to construct a building to manufacture ice. The permit granted Mr. Lipsitz permission to construct the building and the permit carried an indorsement that the use of the land was in conformity with the provisions of the zoning ordinance. The land upon which the ice factory was to be constructed was actually in a zone where an ice factory was prohibited. Mr. Lipsitz was notified by letter that the permit was revoked and annulled as being in violation of the law and as having been issued by a mistake of a clerk. Mr. Lipsitz had already leased the premises to a tenant for a term of five years and had started construction on the building. Mr. Lipsitz alleged that the municipality was barred from denying his right to use the premises as an ice factory by estoppel.

The Court held that the doctrine of estoppel did not apply because a municipality is not estopped from enforcing its zoning regulations when a permit had been issued by mistake by its officer or agent. The Court held that:

"A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act

be in violation of law. Paragraph 31 of the ordinance forbade the officials of the municipality to grant the permit which the plaintiff asked and obtained; and paragraph 41 made it a misdemeanor for the plaintiff to use his premises as a factory to make ice as the invalid permit purported to empower.

If the provision of the ordinance be constitutional, it was therefore unlawful for the officers and agents of the municipality to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued without the official power to grant does not, under any principle of estoppel, prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality. In the issuance of permits pursuant to the ordinance at bar, the municipality was not acting in any proprietary capacity nor in the exercise of its contractual powers, but in the discharge of a governmental function through its public officers of limited authority, and *the doctrine of equitable estoppel cannot be here invoked to defeat the municipality in the enforcement of this ordinances, because of an error or mistake committed by one of its officers or agents which has been relied on by the third party to his detriment.* Every one dealing with the officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.

So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act of its officer or agent, it is not estopped by the unauthorized or wrongful act of its officer or agent in issuing a permit that is forbidden by the explicit terms of an ordinance.

It follows that, because the ordinance prohibited the use of the premises in question for the making of ice by artificial methods, any permit issued would be void, and the person who received the permit would derive no benefit, and whatever he might do in pursuance of this permission would be

at his own risk and loss, unless the prohibition itself were void."

Id. at 227–28, 164 A. at 745–46 (citations omitted) (emphasis added).

In *Town of Berwyn Heights v. Rogers*, 228 Md. 271, 179 A.2d 712 (1962), Phillip Rogers, a home builder, began construction of a residence in Berwyn Heights. Mr. Rogers had not started construction until he had received building permits from both the county's building inspectors and the Town of Berwyn Heights'[15] inspectors. The construction was in compliance with the permits; however, the Town of Berwyn Heights concluded that a mistake had been made in the issuance of the permits so that the residence was being built in violation of a zoning ordinance. The Town of Berwyn Heights filed suit to enjoin the construction of Mr. Rogers.

Mr. Rogers alleged that the Town of Berwyn Heights was estopped from filing suit because it and the county had issued Mr. Rogers building permits, and Mr. Rogers had expended substantial amounts of money in partially constructing the residence. The Court held that:

"Some authorities hold that the principle of estoppel does not apply against a city, but the majority rule is to the effect that the doctrine of estoppel in pais is applied to municipal, as well as to private, corporations and individuals, at least where the acts of its officers are within the scope of their authority and justice and right requires that the public be estopped. And it has been held that municipalities may be estopped by reason of the issuance of permits. However, the cases and text-writers very generally state that a municipality is not estopped to set up the illegality of a permit. And the issuance of an illegal permit creates no 'vested rights' in the permittee. *We have held above that the permits issued to the appellee were in violation of the zoning ordinance; consequently they were unlawful and*

15. The Town of Berwyn Heights was, and remains, a municipal corporation.

did not estop the appellant [the Town of Berwyn Heights] from prosecuting this suit."

Id. at 279–80, 179 A.2d at 716 (citations omitted) (emphasis added).[16]

While we are sympathetic to the plight in which respondent has found himself, we hold that the county is not estopped from enforcing the BCZR as it was applied by the Board of Appeals. We have held, generally, that permits that have been issued that are in violation of the zoning ordinances are unlawful and cannot be grounds for estopping a municipality from the enforcement of the ordinance. We stated in *Lipsitz* that "the doctrine of equitable estoppel cannot be here invoked to defeat the municipality in the enforcement of its ordinances, because of an error or mistake committed by one of its officers or agents which has been relied on by the third party to his detriment." *Lipsitz*, 164 Md. at 227, 164 A. at 746.

III. Conclusion

We hold that the Court of Special Appeals failed to give appropriate deference to the expertise of the Board of Appeals in interpreting the BCZR. Furthermore, there was substantial evidence in the record to support the findings made by the Board of Appeals and the decision made by the Board of Appeals was not based on an erroneous conclusion of law. The Board of Appeals properly found that respondent's business does not satisfy the definition of "commercial agriculture," because respondent was not involved in the use of the

16. There have been cases where we have granted equitable estoppel against a municipality; however, they are distinguishable from the case at bar. In *Permanent Financial Corp. v. Montgomery County*, 308 Md. 239, 518 A.2d 123 (1986), a builder sought to estop the county from asserting that the top floor of a building exceeded a height control imposed by local zoning ordinances. We held that the county was estopped because the builder had designed and constructed the building in reliance on the building permits and the counties long-standing and reasonable interpretation as to how a building's height should be calculated. The record in the case at bar does not indicate any long-standing practice in Baltimore County to include snakes as farm animals or the raising and breeding of snakes as commercial agriculture. To the extent there is any such evidence, it is to the contrary.

§ 541(c)(3) is likewise zero. The circuit court was thus correct in holding that Hartford has no obligation to Scott.

In this Court, General Accident argues that *the terms of the Hartford policy,* irrespective of § 541(c)(3), entitle Scott to coverage. General Accident did not present this argument to the circuit court. Therefore, we decline to consider it here. *See* Md.Rule 8-131(a).

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.

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670 A.2d 484

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

v.

BEACHWOOD I LIMITED PARTNERSHIP.

No. 239, Sept. Term, 1995.

Court of Special Appeals of Maryland.

Dec. 1, 1995.

Reconsideration Denied Jan. 30, 1996.

People's counsel for county and neighbors of tract in question appealed decision of county board of appeals granting zoning reclassification which lowered permitted residential density as requested by developer. The Circuit Court, Baltimore County, John Grason Turnbull, J., affirmed. Counsel and neighbors appealed. The Court of Special Appeals, Moylan, J., held that: (1) evidence before board was not sufficient to generate fairly debatable issue that county council made mistake as to zoning of tract; (2) in granting reclassification, board failed to satisfy county code's requirements as to factors that must be considered in making reclassification, and as to written findings required for reclassifications involving land within certain critical area; and (3) reclassification would not be treated as instance of contract zoning.

Reversed.

Cathell, J., concurred and filed opinion.

1. Zoning and Planning ⚷672

As policy decision made by legislative branch of charter county, comprehensive zoning required no further justification to support it; it was presumptively correct.

2. Administrative Law and Procedure ⚷751

Ordinarily, when judicial branch of government is called on to review decision made by administrative agency, the watchword is deference.

Case Exhibit D

argument made by the developers, Judge Singley stated for the Court of Appeals:

> Underlying this argument is a common misconception—a confusion between the planning function, the end product of which is the Master Plan, specifically provided for in County Code, Art. II. Planning, §§ 22–12 through 22–17, and the zoning function, covered by Code, Art. III. Zoning, §§ 22–18 through 22–31. Zoning or rezoning in accordance with a comprehensive plan is a legislative function. *There is no requirement that the comprehensive plan adopted by the legislative body must conform to the recommendations of the Master Plan.*

266 Md. at 354, 292 A.2d 680. (Citations omitted) (Emphasis supplied).

Particularly pertinent to the case now before us was the further observation of the Court of Appeals:

> While it is true that other jurisdictions have by statute required that zoning ordinances be in accordance with the master plan, Baltimore County has not.

Id. (Citation omitted).

No Fairly Debatable Issue As To "Mistake" In Comprehensive Zoning

[23] We hold that the evidence before the County Board of Appeals was not sufficient to generate a fairly debatable issue that there had been a mistake in the 1992 Comprehensive Zoning of the County Council. Absent such mistake, the County Board of Appeals should not have granted the rezoning classification and the Circuit Court for Baltimore County should not have affirmed that action by the Board of Appeals.

The fact that the 1992 Comprehensive Zoning departed from earlier comprehensive zonings is of no consequence. The fact that the D.R. 1 zoning is out of character with surrounding zoning does not *per se* establish a mistake on the part of the County Council. The fact that the County Master Plan, as a set of guidelines, may have suggested a more intensive zoning does not establish a mistake on the part of the County Council. The fact that a more intense residential zoning would have been compatible with surrounding circumstances does not, *ipso facto*, establish that the D.R. 1 zoning was not also compatible. The fact that a more intense residential zoning would have made development of the tract more economically advantageous to the property owner does not establish a mistake in the Comprehensive Zoning.

Independent of all other considerations, moreover, is the over-arching consideration that none of the circumstances argued by Beachwood were shown to have been unknown to the County Council at the time of the 1992 Comprehensive Zoning. It follows that the issue of mistake was not fairly debatable before the County Board of Appeals and its decision cannot be sustained.

People's Counsel v. Mockard: The Procedural Flaw

[24] Our reversal of the Circuit Court for Baltimore County and, indirectly, our overturning of the zoning reclassification granted by the Baltimore County Board of Appeals rests on two independent grounds. We conclude not only that the *decision* of the County Board of Appeals was *substantively flawed* because the issue of "mistake" was not fairly debatable, but also that the *opinion* announcing the decision was *procedurally flawed.* Dispositive of this fatal procedural flaw is our decision in *People's Counsel for Baltimore County v. Mockard,* 73 Md.App. 340, 347–51, 533 A.2d 1344 (1987).

BALTIMORE COUNTY CODE (1978), § 2–356(j) explicitly spells out what must be done by the County Board of Appeals before the zoning of a property may be reclassified:

> (j) *Findings prior to reclassification.* Before any property is reclassified pursuant to this section, the board of appeals must find . . .

Subsection (j)(1), as has already been discussed, requires an explicit finding of either "a substantial change in the character of the neighborhood" or "that the last classification of the property was established in error." It is subsection (j)(2) that then sets forth in detail a list of the factors that must be

considered and as to which findings must be made. The factors must be considered and the findings must be made, moreover, *both* with respect to the finding of change or mistake, in the first instance, *and also* with respect to the prospective reclassification of the property that is to be made, in the second instance. Subsection (j)(2) requires a finding:

> [t]hat the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including but not limited to all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, and other public facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program.

With respect to the property that was reclassified in this case, there was an additional set of procedural requirements imposed on the opinion of the County Board of Appeals. Since 1988, most of the tract involved in this litigation has been designated as a "limited development area" within the Chesapeake Bay Critical Area. Subsection (j)(3) provides that any "reclassification pertaining to land within the Chesapeake Bay Critical Area is subject to" additional limitations. The additional limitation pertinent in this case is contained in subsection (j)(3)(b):

> *No reclassification may be granted unless the board has made written findings* that the proposed reclassification will:

> 1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;
> 2. Conserve fish, wildlife, and plant habitat; and
> 3. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts. (Emphasis supplied.)

The opinion of the Board of Appeals abjectly failed to satisfy the requirements of either subsection (j)(2) or subsection (j)(3)(b). Indeed, the feeble argument that Beachwood makes in this regard is based on the single sentence at the end of the Board's opinion:

> The Board has carefully reviewed and considered the evidence and testimony presented in these proceedings, and finds that the testimony presented by the Petitioner and, particularly, *the expert testimony given by Mr. Crozier with his supporting reasons, supports a finding of fact that the subject property was erroneously zoned by the County Council.* (Emphasis supplied.)

Its inadequacy to satisfy the Code provision is palpable. Quite aside from the almost cavalier attempt to finesse the requirement of precise and considered findings of fact by the casual incorporation of all of the testimony of Mr. Crozier into a brief allusion to it, it is transparent that even that attempted incorporation is offered only to support "a finding of fact that the subject property was erroneously zoned by the County Council." It does not even purport to deal with the additionally required companion finding that, even following a finding of error in the Comprehensive Plan, the reclassification itself was warranted. It does not, moreover, even remotely allude to the required findings of subsection (j)(3)(b) with respect to a reclassification in the Chesapeake Bay Critical Area.

In *People's Counsel v. Mockard*, this Court analyzed at length the requirements spelled out in subsection (j)(2) and

concluded that a zoning reclassification by the Baltimore County Board of Appeals must be reversed because of the failure of the Board's opinion to satisfy the requirements of the subsection. In that opinion, Judge Rosalyn Bell very explicitly set out:

> Under that provision, the Board must make two findings: 1) that there was error in the comprehensive zoning, and 2) that the prospective reclassification is warranted. Both of those findings may be made "only upon consideration of factors ... including, but not limited to, all of the following...."

73 Md.App. at 347, 533 A.2d 1344.

The appellees in that case, very much as Beachwood here, suggested that it would be enough to satisfy the subsection if the Board, in the course of listening to the evidence, could thereby be deemed to have "considered" each of the required factors. It argued that the subsection by no means requires specific findings on the record. We squarely rejected that argument:

> Appellees filed a cross-appeal, arguing that § 2–58.1(j)(2) does *not* require the Board to enter specific findings as to each factor. They claim that the Board is only required to "consider" the factors....
>
> [T]hey claim that the Baltimore County Board need only "consider" certain factors, hence the Board did not need to objectively deal with the factors. We do not agree with appellees' conclusion.

73 Md.App. at 348, 533 A.2d 1344 (Emphasis in original).

Judge Bell analyzed in detail why clear findings of fact are necessary when dealing with appeals from administrative agencies. She quoted from *United Steelworkers of America AFL–CIO, Local 2610 v. Bethlehem Steel Corp.*, 298 Md. 665, 679, 472 A.2d 62 (1984):

> "Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court. However, in judicial review of agency action, the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency."

73 Md.App. at 348–49, 533 A.2d 1344.

Judge Bell pointed out that in dealing with administrative appeals, the appellate court may not supply factual findings which were not made by the administrative agency. It would only be when the findings of the Board of Appeals were uncontradicted and where only one conclusion could be reached that a lack of such findings would not warrant remand. *See also Ocean Hideaway Condominium Ass'n v. Boardwalk Plaza Venture*, 68 Md.App. 650, 664–65, 515 A.2d 485 (1986); *Gough v. Board of Zoning Appeals for Calvert County*, 21 Md.App. 697, 704, 321 A.2d 315 (1974).

[25] It is not for us to search the record before the County Board of Appeals in an effort to construct a possible rationale that might support its zoning reclassification. Robert M. Anderson, 3 *American Law of Zoning* (3d ed. 1986), § 16.41 succinctly states the reason why administrative agencies are required to make express findings:

> Given express findings, the court can determine whether the findings are supported by substantial evidence, and whether the findings warrant the decision of the board. If no findings are made, and if the court elects not to remand, its clumsy alternative is to *read* the record, *speculate* upon the portions which probably were believed by the board, *guess* at the conclusions drawn from credited portions, *construct a basis* for decision, and *try to determine* whether a decision thus arrived at should be sustained. In the process, the court is required to do much that is assigned to the board, and the latter becomes a relatively inefficient instrument for the construction of a record. (Emphasis supplied.)

In the absence of required findings by the Board, the conclusion of this Court in *Mockard* was clear:

> Hence, we hold that "consideration of factors" requires an articulation of the findings as to each of the applicable factors contained in [§ 2–356(j)(2)]. The Board must make such findings in *both* a finding of error in the comprehensive plan and in a decision that the reclassification was warranted.

73 Md.App. at 349, 533 A.2d 1344. (Emphasis in original).

We there rejected the finding of error in the comprehensive zoning because of the failure of the Board of Appeals to render an opinion in compliance with § 2–356(j). We held that the opinion of the Board was "conclusory in nature and lack[ed] sufficient indication of which, if any, factors the Board considered in making its determination." 73 Md.App. at 350, 533 A.2d 1344. It is not enough, moreover, for the findings of the Board to be implicit. We made the requirement for express and precise findings very clear:

> As discussed earlier, in finding error or that a reclassification is warranted, the Board must considered factors, "including, *but not limited to,* all of the following. . . ." Section 2–58.1(j)(2). This means that, in order to make either of those findings, the Board must *at least* articulate its findings as to the 13 identified factors.

Id. (Emphasis in original).

The Spectral Apparition of Contract Zoning

[26] There hovers on the edges of this case, albeit only in the shadows, the almost spectral apparition of contract zoning. Because neither the comprehensive zoning of the County Council nor the zoning reclassification of the County Board of Appeals expressly contains any forbidden *quid pro quo,* we do not treat what is before us as an actual instance of contract zoning. *Somerset v. Montgomery County,* 229 Md. 42, 50–52, 181 A.2d 671 (1962); *Pressman v. Baltimore,* 222 Md. 330, 343–45, 160 A.2d 379 (1960). So strong, however, is the sense of the unseen presence that it ill behooves us to depart the scene without at least acknowledging the apparition.

To change the metaphor, Beachwood raises the weapon of contract zoning very gingerly. This is understandable, for it is, most assuredly, a two-edged sword. After suggesting that Baltimore County, through its Office of Planning and Zoning, sought to use the comprehensive zoning and reclassifying processes as a means to pressure Beachwood into financing an off-site traffic improvement, Beachwood, in its brief before us, noted the impropriety:

> Appellants . . . may be correct in that the county's motivation and means may be improper. The comprehensive zoning process approach to this site to coerce improvements that are truly the responsibility of government was improper.

Whether the suggested contract zoning that permeates the atmosphere of this case was real or imaginary, proved or unproved, proper or improper, it is clear that the subject matter of the alleged zoning contract was an off-site traffic improvement to an intersection near the Beachwood property. Were the Beachwood property to be developed residentially, most of the residents would use, on a regular basis, the nearby intersection of Morse Road and North Point Boulevard. It is conceded by all parties that there is at that intersection an undesirable configuration that creates a potential traffic hazard.

It is not, however, a problem that would *per se* be *created* by more intensive traffic use nor one that would *per se* be *eliminated* by less intensive traffic use. It is a problem that would exist whether one car per day or 5,000 cars per day should use the intersection. It is described as a "sight-distance" problem with respect to vehicles moving onto Morse Road from North Point Boulevard and vehicles moving onto North Point Boulevard from Morse Road. Both suffer obstructions to their line of vision as they prepare to make the necessary turn.

Self-evidently, the more cars that pass through the intersection, the greater the likelihood that an accident may occur. Although the traffic problem is not the result of traffic volume,

IN RE: PETITION FOR SPECIAL HEARING W/S of Ligman Avenue, 100' N of the c/l North Dakota Avenue **(2108 Alma Avenue)** 15th Election District 7th Council District Howard Ramsay, Owner; Louis & Nita Savader, Contract Purchasers	* * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 04-250-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owner of the subject property, Howard Ramsay, and the Contract Purchasers, Louis and Nita Savader. The Petitioners request a special hearing to approve a one-year extension of the two-year limitation imposed upon the removal (and replacement) of a damaged structure, pursuant to Section 104.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), which was due to expire on November 20, 2003. In addition, the Petitioners request approval of an extension of the relief granted in Case No. 89-343-SPH to permit all existing nonconforming uses on the subject property to remain. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Howard Ramsay, property owner, Louis and Nita Savader, Contract Purchasers, and Chris Barkley, who prepared the site plan for this property. Also appearing in support of the request was Estelle Johnson, adjacent property owner. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is an irregular shaped waterfront parcel with frontage on Jones Creek in the community of Chesapeake Terrace in eastern Baltimore County. The property is located on the north side of Ligman Avenue, between Anna and Alma Avenues and contains approximately 0.668 sq.ft. in area, zoned D.R.5.5.

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Date 11/17/04
By

Presently, the lot is improved with three single-family dwellings and the foundation of a fourth dwelling. It is this fourth dwelling that is at issue in the instant case.

In this regard, the history of this property is significant. Testimony indicated that Mr. Ramsay acquired the subject property in 1989, at which time, the lot was improved with four single family dwellings, known as 2108, 2110, 2112 and 2114 Alma Avenue. Apparently, these houses were built in the 1920s/30s, prior to the adoption of the first set of zoning regulations in Baltimore County in 1945. In any event, upon his acquisition of the property, Mr. Ramsay (through the Whistler Corporation, an entity in which he was a principal) sought zoning relief pursuant to a Petition for Special Hearing filed under Case No. 89-343-SPH. Specifically, relief was requested to legitimize and continue the use of the four houses on the property as nonconforming. At that time, the property was also zoned D.R.5.5 and under the zoning regulations for that classification, no more than one single family dwelling per lot is allowed. Following the hearing on that matter, then Deputy Zoning Commissioner Ann M. Nastarowicz granted relief and conferred nonconforming status on the use of the property by her opinion and Order dated March 13, 1989. At the hearing in the instant matter, Mr. Ramsay testified that he leased all four dwellings for residential occupancy. Apparently, however, in 2001, a tenant severely vandalized the dwelling known as 2108 Alma Avenue. Photographs of the damage were produced at the hearing. As a result of the significant damage suffered, Mr. Ramsay razed that structure on or about November 21, 2001. Mr. Ramsay has now entered into a contract to sell the property to Mr. & Mrs. Savader. Apparently, that contract provides that the new owners can legally rebuild the razed dwelling and continue to maintain four dwellings on the subject property. However, in that the fourth dwelling was razed over two years ago, the instant Petition for Special Hearing was filed to determine the status of the nonconforming use of the property.

Nonconforming uses are defined in Section 101 of the B.C.Z.R. and regulated in Section 104 thereof. A nonconforming use is defined as "A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use." Essentially, the nonconforming use designation grandfathers and legitimizes an otherwise

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By

illegal use. As noted above, the D.R.5.5 zoning regulations would allow but one single-family dwelling on this lot. However, the nonconforming use designation allows more than one dwelling in that the dwellings existed on the property prior to the effective date of the zoning regulation prohibiting such use.

This nonconforming use process was described in Board of Zoning Appeals of Howard County v. Weider, 207 Md. 389 (1955). Therein the Court stated, "Where the evidence conclusively establishes that a property owner before and at the time of the adoption of the original zoning ordinance was using in a then lawful manner substantially all of his tract of land for a use which by this legislative action became non-permitted, the owner has established a lawful nonconforming use." Nonconforming uses are not favored under the law. They are contrary to the zoning scheme and as such, impose "a formidable threat to the success of zoning." (See County Council Prince George's County v. E.L. Gardner, Inc., 293 Md. 259 (1982) at Pg. 267). They "limit the effectiveness of land use controls, contribute to urban blight, imperil the success of the community plan, and injure property values." (See Gardner, Pg. 267.)

As noted above, Section 104 of the B.C.Z.R. regulates nonconforming uses. Section 104.1 thereof provides that a nonconforming use may continue, except when there is any "abandonment or discontinuance of such nonconforming use for a period of one year or more." Clearly, under this Section, Mr. Ramsay's removal of the dwelling in 2001 and failure to replace same within one year causes the loss of the right to have that structure. The Petitioners now attempt to avoid this consequence, seeking relief pursuant to Section 104.2 of the B.C.Z.R. That Section provides that a structure damaged by fire or other casualty may be restored within two years after such destruction or damage, but may not be enlarged. In this case, it is clear that fire or other casualty did not destroy the building. Although the word casualty is not defined by the B.C.Z.R., it is defined in Webster's Third New International Dictionary as "A person or thing that has failed, been injured, lost, or destroyed as a result of uncontrollable circumstances." (Emphasis added.) Casualty is generally considered loss due to fire, flood or other natural and uncontrollable

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Date 11/14/
By

acts. The damage caused to the dwelling that was removed was intentional and in any event, was not caused by a casualty.

Based upon the testimony and evidence offered, it is clear that relief cannot be granted. Mr. Ramsay's removal of the dwelling in 2001 constitutes an abandonment of the nonconforming use designation for that structure under Section 104.1 of the B.C.Z.R. Moreover, his desire to now rebuild the structure cannot be saved under the provisions of Section 104.2 thereof.

A final issue under consideration relates to the doctrine of estoppel. Generally, the doctrine of estoppel means that any party (in this case, Baltimore County), is prevented (estopped) from contesting the action of another party (in this case, the Petitioners), when the first party committed some act upon which the second party relied. In this case, Mr. Ramsay contends that after he razed the structure, Baltimore County issued a building permit (B47588) allowing him to rebuild that structure. He contends that the County is now estopped from revoking the permission granted by that permit.

Estoppel is sparingly applied to municipal authorities (See National Institutes of Health Federal Credit Union v. Hawk, 47 Md. App. 189 (1980). In this case, there is no estoppel in that Mr. Ramsay did not take any action on his permit. That is, although he razed the offending structure, he did not attempt to replace it. Had he undertaken such expense and effort, then the end result may be different. However, since there was no attempt to rebuild the fourth house, there is no estoppel, even under the most liberal circumstances on which that doctrine can be applied.

For all of these reasons, I find that the Petition for Special Hearing must be denied. Although appreciative of the fact that four dwellings existed on the property for many years and there is no neighborhood objection, the B.C.Z.R. simply do not allow me to grant the relief requested.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 7th day of January 2004 that the Petition for Special Hearing to approve a one-year

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Date 1/7/04
By

extension of the two-year limitation imposed upon the removal (and replacement) of a damaged structure, pursuant to Section 104.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), which was due to expire on November 20, 2003, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that an extension of the relief granted in prior Case No. 89-343-SPH to permit all existing nonconforming uses on the subject property to remain, be and is hereby GRANTED; however, limited to the three existing single family dwellings.

Any appeal of this decision must be entered within thirty (30) days of the date hereof.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

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Date 11/14
By

CBCA - Slide

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2108 ALMA AVE

which is presently zoned DR 5.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve A 1 YEAR EXTENSION OF THE TWO YEAR LIMITATION ON A STRUCTURE REMOVED DUE TO DAMAGE PER SECT. 104.2 BCZR, AND DUE TO EXPIRE NOV. 29, 2005 & EXTENSION OF ZONING CASE # 89-343-SPH TO PERMIT ALL EXISTING NON-CONFORMING USES ON THE SUBJECT PROPERTY

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Louis + Nita Savader
Name - Type or Print

Signature

6002 Hunt Club Rd. Ln.
Address — Telephone No.

Roland Park MD 21210
City — State — Zip Code

410-466-8220

Legal Owner(s):

Howard Ramsay
Name - Type or Print

Howard Ramsay
Signature

Name - Type or Print

Signature

7613 OLD ROAD BAY 477-5051
Address — Telephone No.

EDGEMERE, MD 21219
City — State — Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address — Telephone No.

City — State — Zip Code

Representative to be Contacted:

Chris Barkley - REALTOR
Name

9120 HINTON AVE 477-0007
Address — Telephone No.

BALTO. MD 21219
City — State — Zip Code

ORDER RECEIVED FOR FILING
Date 11/14
By RBC

Case No. 04-250-SPH

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By SMA/WCR Date 11-14-03

REV 9/15/98

J. S. T. Engineering Co., Inc.
PROFESSIONAL LAND SURVEYORS
3812 Mary Avenue
Baltimore, Maryland 21206
444-8848

DESCRIPTION

0.668 +/- Acre Parcel on the north side of Ligman Avenue, 50' west of Alma Avenue, 15TH Election District, Baltimore County, Maryland.

Beginning at a point in the center of Ligman Avenue, 50 feet west of the intersection of the centerline of Ligman Avenue and the west side of Alma Avenue. Running thence in the center of Ligman Avenue 1.) North 87 degrees West 100.00 feet. Thence running 2.) North 03 degrees East 228.29 feet to Jones Creek. Thence running on Jones Creek
3.) North 70 degrees 08 minutes 33 seconds East 1.16 feet,
4.) North 60 degrees 47 minutes 57 seconds East 15.10 feet,
5.) North 50 degrees 50 minutes 02 seconds East 15.08 feet,
6.) North 42 degrees 27 minutes 58 seconds East 15.00 feet,
7.) North 41 degrees 39 minutes 03 seconds East 15.10 feet,
8.) North 35 degrees 30 minutes 13 seconds East 15.12 feet,
9.) North 31 degrees 57 minutes 26 seconds East 15.00 feet,
10.) North 33 degrees 56 minutes 05 seconds East 15.22 feet,
11.) North 30 degrees 20 minutes 01 seconds East 16.03 feet,
12.) North 18 degrees 03 minutes 59 seconds East 2.64 feet,
13.) North 18 degrees 16 minutes 09 seconds East 15.03 feet,
14.) North 19 degrees 12 minutes 07 seconds East 14.99 feet,
15.) North 18 degrees 13 minutes 42 seconds East 15.00 feet, and
16.) North 16 degrees 48 minutes 55 seconds East 14.98 feet. Running thence 17.) South 73 degrees 14 minutes 01 seconds East 6.82 feet, 18.) South 15 degrees East 8.00 feet and 19.) South 03 degrees West 374.67 feet to the place of beginning.

Containing 0.668 +/- Acres of Land. The improvements being known as #'s 2108, 2110, 2112 & 2114 Alma Avenue.

STATE OF MARYLAND
JOSEPH W. McGRAW, JR.
PROFESSIONAL REGISTERED LAND SURVEYOR

J. S. T.

04-250-SPH

ZONING DESCRIPTION FOR 2108 ALMA AVENUE
(address)

Beginning at a point on the west side of
(north, south, east, or west)

Ligman Avenue which is 20'
(name of street on which property fronts) (number of feet ot right-of-way width)

wide at the distance of 100' North of the
(number of feet) (north, south, east or west)

centerline of the nearest improved intersecting street North Dakota Avenue
(name of street)

which is 30' wide. *Being Lot # 127,
(number of feet of right-of-way width)

Block 22, Section # 111 in the subdivision of Chesapeake Terrace
(name of subdivision)

as recorded in Baltimore County Plat Book # 12, Folio # 99,

containing .0668. Also known as 2108 Alma Avenue
(~~square feet or~~ acres) (property address)

and located in the 15th Election District, 7 Councilmanic District.

04.250. STPU.

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #04-250-SPH
2108 Alma Avenue
W/side of Ligman Avenue, northwest corner of Alma and Lieman Avenue
15th Election District
7th Councilmanic District
Legal Owner(s): Howard Ramsay
Contract Purchaser: Louis and Nita Sarafist
Special Hearing: to permit the extension of zoning case #89-343-SPH
Hearing: Friday, January 2, 2004 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

12/233A Dec. 18 C642251

CERTIFICATE OF PUBLICATION

12/18/, 2003

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/18/, 2003.

- [x] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

04-236-SPH

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 235910

DATE 4/4/05 ACCOUNT R 001 6150

AMOUNT $ 65.00

RECEIVED
FROM

FOR

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-250-SPH

HOWARD RAMSAY

2108 ALMA AVENUE

15TH ELECTION DISTRICT APPEALED: 1/22/2004

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

********COMPLETE AND RETURN BELOW INFORMATION*****

APPEAL SIGN POSTING REQUEST

45F13

CASE NO.: 04-250-SPH

HOWARD RAMSAY

2108 ALMA AVENUE

15TH ELECTION DISTRICT APPEALED: 1/22/2004

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

**********COMPLETE AND RETURN BELOW INFORMATION*****

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Attention: Kathleen Bianco
Administrator

CASE NO.: 04-250-SPH

Petitioner/Developer:

HOWARD RAMSAY

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

2108 ALMA AVENUE

The sign was posted on 3/30, 2004

By: Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Printed Name)

CERTIFICATE OF POSTING

RE: Case No.: 04-250-SPH

Petitioner/Developer: LOIS & NITA SAVADER

Date of Hearing/Closing: 1/2/04

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTN: Becky Hart {(410) 887-3394}

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: 2108 ALMA ALMA AVENUE

The sign(s) were posted on 12/18/03
(Month, Day, Year)

Sincerely,

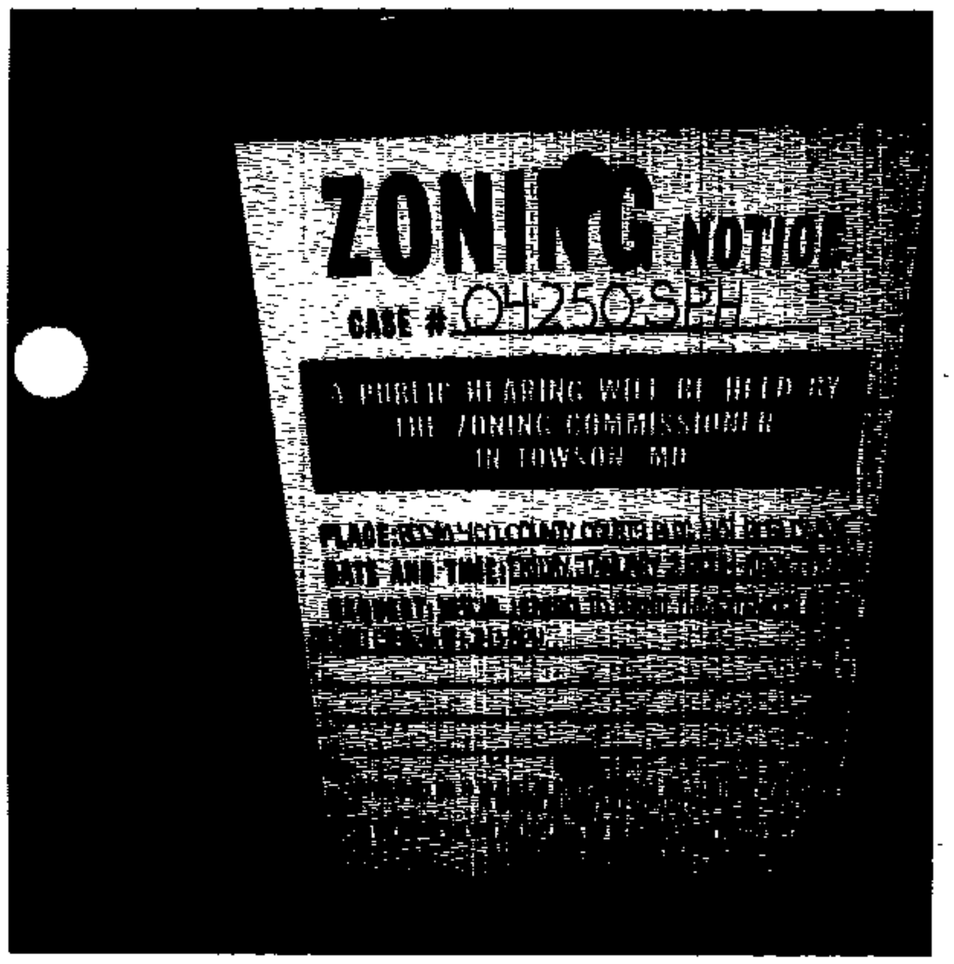
12/18/03
(Signature of Sign Poster) (Date)

SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)



DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements The newspaper will bill the person listed below for the advertising This advertising is due upon receipt and should be remitted directly to the newspaper

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: # 04-250-SPH

Petitioner: Chris Barkley

Address or Location: 2108 ALMA AVE 21219

PLEASE FORWARD ADVERTISING BILL TO

Name: CHRIS BARKLEY

Address: 9120 HINTON AVE
BALTO. MD. 21219

Telephone Number: # 410-661-2600

04-250-SPH

Department of Permits and Development Management

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

December 11, 2003

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 04-250-SPH
2108 Alma Alma Avenue
W/side of Ligman Avenue, northwest corner of Alma and Lieman Aveman
15th Election District – 7th Councilmanic District
Legal Owner: Howard Ramsay
Contract Purchaser: Louis and Nita Savader

Special Hearing to permit the extension of zoning case #89-343-SPH

Hearing: Friday, January 2, 2004 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco

Timothy Kotroco
Director

TK:rlh

C: Howard Ramsay, 7613 Old Road Bay, Edgemere 21219
Chris Barkley, Realtor, 9120 Hinton Avenue, Baltimore 21219
Louis and Nita Savader, 6602 Hunt Club Road, Roland Park, 21210

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, DECEMBER 18, 2003.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

4 5 6
(6)

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

September 2, 2004

NOTICE OF DELIBERATION

IN THE MATTER OF:
***LOUIS AND NITA SAVADER / HOWARD RAMSAY* – Petitioner**
Case No. 04-250-SPH

Having heard this matter on 9/01/04, public deliberation has been scheduled for the following date /time:

DATE AND TIME : TUESDAY, NOVEMBER 23, 2004 at 9:30 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Closing briefs are due on Tuesday, October 12, 2004 *
(Original and three [3] copies)

* Change in date for memos to be filed: Baltimore County Government offices will be closed on 10/11/04 (the date originally provided at the close of hearing); therefore, the date for memos has been moved to the next County business day (10/12/04).

ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco
Administrator

c: Counsel for Appellant /Petitioner (Contract Purchaser) : J. Carroll Holzer, Esquire
Appellant /Petitioner (Contract Purchaser) : Louis and Nita Savader

Petitioner /Legal Owner : Howard Ramsay

Chris Barkley

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

FYI: 4-5-6

Printed with Soybean Ink
on Recycled Paper

456
6

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

July 13, 2004

SECOND NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 04-250-SPH **IN THE MATTER OF:** ***HOWARD RAMSAY*** - Legal Owner; Louis & Nita Savader – C.P. 2108 Alma Avenue
15th Election District; 7th Councilmanic District

1/07/04 – Order of Z.C. in which requested special hearing relief for replacement of damaged (4th) structure was DENIED; remaining nonconforming uses (3 existing family dwellings) GRANTED.

which was reassigned to be heard on 9/29/04 has been **POSTPONED** at the request of Counsel for Appellant /Petitioner due to previously scheduled conflict; and has been

REASSIGNED FOR: **WEDNESDAY, SEPTEMBER 1, 2004 at 10:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the *advisability* of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Blanco
Administrator

c: Counsel for Appellant /Petitioner (Contract Purchaser) : J. Carroll Holzer, Esquire
Appellant /Petitioner (Contract Purchaser) : Louis and Nita Savader

Petitioner /Legal Owner : Howard Ramsay

Chris Barkley

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

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on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

DATE: December 15, 2003

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For December 1, 2003
Item No. 250

The Bureau of Development Plans Review has reviewed the subject-zoning item.

Flood protection elevation for this site is 10.4 feet.

In conformance with *Federal Flood Insurance* requirements, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction.

The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the *Baltimore County Building Code* must be followed whereby elevation limitations are placed on the lowest floor (*including basements*) of residential (*commercial*) development.

The building engineer shall require a permit for this project.

The building shall be designed and adequately anchored to movement and structure with materials resistant to flood damage.

Flood-resistant construction shall be in accordance with requirements of B.O.C.A. International Building Code adopted by the county.

RWB:CEN:jrb

cc: File

fro
1/2

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: November 28, 2003

RECEIVED
DEC 2003
ZONING COMMISSIONER

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case 04-222 and 04-250**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared By: Mark A Cunningham

Section Chief: Lyn Lanham

AFK/LL

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

SHA
Driven to Excel
State Highway Administration
MARYLAND DEPARTMENT OF TRANSPORTATION

Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Date: 11.26.03

Ms. Rebecca Hart
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 250 JRA

Dear. Ms. Hart:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

L. G. Gredlein

for Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco

FROM: R. Bruce Seeley RMS

DATE: December 5, 2003

SUBJECT: Zoning Item # 04-250
Address 2108 Alma Avenue
Ramsay Property

Zoning Advisory Committee Meeting of November 24, 2003

_____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

__X__ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

_____ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).

_____ Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).

__X__ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

Additional Comments:

Reviewer: Keith Kelley Date: December 1, 2003

S:\Devcoord\ZAC SHELL 11-20-03.doc

RE: PETITION FOR SPECIAL HEARING 2108 Alma Avenue; W/side of Ligman Ave, NW corner of Alma & Lieman Avenue 15th Election & 7th Councilmanic Districts Legal Owner(s): Howard Ramsey Contract Purchaser(s): Louis & Nita Savader Petitioner(s)	* * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 04-250-SPH

* * * * * * * * * * * * *

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence and documentation filed in the case.

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED
DEC 0 8 2003
Per .....

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of December, 2003, a copy of the foregoing Entry of Appearance was mailed to Chirs Barkley, Realtor, 9120 Hinton Avenue, Baltimore, MD 21219, Representative for Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Department of Permits and Development Management

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

February 27, 2004

Howard Ramsey
7613 Old Road Bay
Edgemere, MD 21219

RECEIVED
FEB 2 7 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Dear Mr. Ramsey:

RE: Case :04-250-SPH, 2108 Alma Ave

Please be advised that an appeal of the above-referenced case was filed in this office on January 22, 2004 by Nita & Louis Savader. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Timothy Kotroco
Director

TK:rjc

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Chris Barkley Realtor 9120 Hinton Avenue, Baltimore, MD 21219
Louis & Nita Savader 6002 Hunt Club Lane Roland Park MD 21210

Department of Permits and Development Management

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

(Rick Wisdom) Rm 100

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

ORIGINAL 887-3391
CORESPONDENCE
(STOCK PLANS
887-3900
PERMITS
SITE PLAN

October 23, 2003

Howard and Jan Ramsay
7613 Old Road Bay
Edgemere, Maryland 21219

Dear Mr. and Mrs. Ramsay:

Re: 2108 Alma Ave, Zoning Verification, Election District 15

The subject property is zoned DR-5.5 (Residential Density-5.5 houses per acre). I understand from Ms. Chris Barkley, the realtor, that there were 4 houses on one lot. There was a Zoning Special Hearing in March 1989 to approve a non-conforming use of the four dwellings. It was granted subject to several conditions, including Section 104.1, which states that discontinuation of a nonconforming use for a year or more ends its nonconforming status, and 104.2 which says that a structure damaged to any extent or destroyed by fire or other casualty may be restored within 2 years of such destruction, but may not be enlarged. If you can show that the building in question was razed as a result of such a casualty, you have until November 20, 2003 to begin the rebuilding process.

Enclosed are copies of the order for zoning case # 89-343-SPH, a portion of zoning map #SE 7-H, and a portion of the case file's exhibit #1 showing the site plan of the property at the time the hearing was approved.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

John R. Alexander
Planner II
Zoning Review

Enclosure

c: Letter File

04-250-SPH

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Louis and Nita Savader / Howard Ramsay
Case No.: 04-250-SPH

DATE: November 23, 2004

BOARD/PANEL:

Lawrence S. Wescott	LSW
John P. Quinn	JPQ
Margaret Brassil	MB

RECORDED BY: Theresa R. Shelton / Legal Secretary

PURPOSE: To deliberate the Petition for Special Hearing requested by Howard Ramsay for a one year extension of the two year limitation on a structure removed due to damage per Section 104.2 BCZR and due to expire November 20, 2003 and extension of zoning case 89-343-SPH to permit all existing non-conforming use.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- ✓ Four homes were non-forming use; one (1) home was razed because of damage. Condominium Units
- ✓ Abandonment of Sue
- ✓ 104.2 A structure damaged to any extent or destroyed by fire or other casualty may be restored within two years after such destruction or damage but may not be enlarged. In the case of residentially used structures which are nonconforming in density, the number of dwelling units or density units rebuilt may be equal to but may not exceed the number of units which existed before the casualty. [Bill No. 124-1991]
- ✓ may/shall word usage
- ✓ the word 'may' does not give the right to extend beyond 2 years
- ✓ Canada case cited
- ✓ Idea is to get rid of non-conforming use ; but this wikll still be non-conforming use of other units which originally made up the four; now ¾ non-conforming
- ✓ casualty – was damage
- ✓ Transitional period
- ✓ Non-professional advice given
- ✓ Seller/Realtor
- ✓ Exhibit 6 – One Year Extension
- ✓ Was there an extension of building permit – no building permit was filed
- ✓ Extension intent was to build – filed prior to deadline

- ✓ Property under contract – was to be built back as it was – there was no objection from community
- ✓ If there had been no effort – the law is et for enforcement; i.e. eyesore, razed over 2 years, etc.
- ✓ People's Counsel Memo discussed
- ✓ Year of Isabel – for a period of 2 months, nothing could be done
- ✓ 500.14 Within the Chesapeake Bay Critical Area. [Bill Nos. 32-1988; 9-1996]
- ✓ No decision may be rendered by the Zoning Commissioner on any petition for special exception, variance or special hearing unless the Zoning Commissioner has received from the Director of the Department of Environmental Protection and Resource Management, or his designated representative, written recommendations describing how the proposed request would: etc.
- ✓ If destroyed – need critical variance but this is not a single unit, but part of condo units
- ✓ Only had to 'begin' process – Testimony offered that they would have laid a pipe to show intent to start
- ✓ Dates of letter of requesting extension; response from County; deadline date and Special Hearing date
- ✓ There was a tine issue with regards to obtaining financing
- ✓ The non-conforming use does not end
- ✓ Intent of law is clear but not to cause harm
- ✓ A transfer/contract of sale was taking place and the foundation was still there – the water was never disconnected
- ✓ There was enough intent to show it was going to be re-built
- ✓ The citizen went to the County for information – could not get a timely answer – had to wait for the special hearing
- ✓ In the letter from the Baltimore County employee it states 'begin'; the law says ' restore' in 2 years
- ✓ Would not building result in vancant lot; eye-sore?
- ✓ Nothing in law states that if the location becomes an eyesore that it has to be re-built

DECISIONS BY BOARD MEMBERS:

LW – Deny the request for extension – law says restore in 2 years

JQ – Grant the request for extension – the intention was to rebuild – confusion on the part of information given by the County – property under contract – delay due to Isabel – lack of timely information to Petitioner – not to cause harm through exact interpretation of law

MB - Grant the request for extension – Based on testimony and Exhibits provided

FINAL DECISION: Majority Decision by the panel that the Petitioner's request for a one year extension of the two year limitation on a structure removed due to damage per Section 104.2 BCZR and due to expire November 20, 2003 and extension of zoning case 89-343-SPH to permit all existing non-conforming use.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted,

Theresa R. Shelton

Theresa R. Shelton
County Board of Appeals

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF
SPECIALLY ASSIGNED DELIBERATION

IN THE MATTER OF: Louis and Nita Savader; Howard Ramsay - Petitioners
Case No. 04-250-SPH
SPECIALLY ASSIGNED (SECOND) DELIBERATION

DATE : Wednesday, January 19, 2005

BOARD /PANEL : Lawrence S. Wescott (LSW)
Margaret Brassil (MB)
John P. Quinn (JPQ)

RECORDED BY : Kathleen C Bianco /Administrator

PURPOSE: Specially assigned second deliberation - Case No. 04-250-SPH /Petition to Special Hearing /nonconforming use –replacement of damaged 4th unit.

Deliberation:

Discussion – specially assigned second deliberation in this matter (first deliberation held on 11/23/04; majority granted; Wescott dissented).

JPQ: Convened at his request; after additional review of testimony, found that some of his assumptions were based on misinterpretations by him.

Thought they were attached but actually individual properties

Looked over regulations; no regulation to grant extension

Did not make application; permit was never given

Basically ran out of time

Law says if not rebuilt, nonconforming use is lost; must conform with the regulations

Intent was not sufficient

LSW: Also pointed out that during original deliberation /discussion, did say that 4 or 3 would still be nonconforming use; that is not correct

If you multiply the DR 5.5 zone by .66 acre, you get 3 allowed dwellings; and therefore, without the 4th one, it would be conforming to the regulations

One factor overlooked at the time of first public deliberation (included on page 3 of Mr. Zimmerman's original brief)

MB: If it did elimination nonconforming, then no harm; without the 4th building, it becomes conforming

Concerned that zoning did not tell Petitioner this could not be done

Reviewed letter from John Alexander, PDM – told Petitioners that they had until November 2 to begin rebuilding process; this was deadline

Decision:

Mr. Quinn and Ms. Brassil changed original opinion; made based on error and misinterpretation; was out of use over one year; was not rebuilt within two year period; extension cannot be granted beyond that two year period; had to have been started as stated in Alexander's letter. Condo not affected; not under purview of the Board in any event.

FINAL DECISION

LSW – Stays with his original decision – to deny Petition for Special Hearing
MB – Believes that Petition should be denied
JPQ – After further review, would deny request for special hearing

- Summary – After review and discussion of evidence and testimony provided at the hearing before the Board, at the conclusion of this Board requested second deliberation, the Petition for Special Hearing is unanimously **DENIED**.

  Written Order to be issued by the Board; appellate period to run from date of written Order.

NOTE: These minutes, which will become part of the case file, are intended only to indicate for the record that a public deliberation took place this date regarding this zoning case. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted

Kathleen C. Bianco

Kathleen C. Bianco, Administrator
County Board of Appeals

List of Records and Site Plans; Case No. 04-250-SPH

I. Record of Proceedings Transmitted by the Zoning Commissioner

1. Petition for Special Hearing, Plat, and Tax Record filed in present case 11/14/03.
2. Petition for Special Hearing in Case 89-343-SPH, 2/24/89.
3. Deputy Zoning Commissioner's decision 3/3/89, Case 89-343-SPH.
4. Land acquisition drawing, 1965.
5. Zoning map excerpt, date of photography 1986.
6. As-Built Plat: 1989.
7. Application for Permit to Raze Dwelling, 2/14/02.
8. Letter from John Alexander of Zoning Office to Hoard and Jan Ramsay 10/23/03
9. Letter from Edward Koplin, P.E. to Carl Richards 11/2003.
10. Letter from Chris Barkley to Timothy Kotroco 11/12/03
11. Photos.

II. Additional Public Records

1. Plumbing Permit record B466767, 11/21/021
2. Razing Permit record. B475788, 3/12/02.
3. GIS Map, flown April, 2002.

BOARD OF APPEALS OF BALTIMORE COUNTY
POST-HEARING BRIEFS
IN THE MATTER OF: Ramsey – Savader (current owner – Savader)

DATE: October 12, 2004

TO: L. Wescott
M. Brassil
J. Quinn

FROM: Kathi

SUBJECT: Case No. 04-250-SPH / *In the Matter of: Howard Ramsey /former Owner/Petitioner; and Louis and Nita Savader /former C.P., now current Owners.*

Attached are the following documents filed in the subject matter:

- ✓ People's Counsel for Baltimore County's Memorandum;
- ✓ Memorandum of Petitioners filed by J. Carroll Holzer, Esquire.

Public deliberation is scheduled in this matter on Tuesday, November 23, 2004 at 9:30 a.m. Notice of that deliberation was sent out on 7/06/04; hearing held on 9/02/04.

Any questions, please call me.

kathi

Attachments (2)

Kathi

IN RE: PETITION FOR SPECIAL HEARING
N/S Ligman Avenue, 65' W of
the c/l of Alma Avenue
(2108, 2110, 2112 and 2114
Alma Avenue)
15th Election District
7th Councilmanic District

The Whistler Corporation
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 89-343-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve the nonconforming use of the four dwellings described herein on the subject property as more particularly described in Petitioner's Exhibit 1.

The Petitioners, by Mr. & Mrs. Howard W. Ramsay, President and Secretary, respectively, appeared, testified, and were represented by Westin A. Park, Esquire. Estelle Johnson, a nearby resident, appeared as an interested party. There were no Protestants.

Testimony indicated that the subject property, known as 2108, 2110, 2112 and 2114 Alma Avenue, also known as Elma Avenue, consists of 0.66 acres zoned D.R. 5.5, and is improved with four single family dwelling units. Petitioners testified they purchased the property in November 1988 and that at the time of purchase, the property was described as Lots 42 and 43 of Section A, Chesapeake Terrace. The property is located within the Chesapeake Bay Critical Areas and abuts Jones Creek. Testimony indicated that Petitioners are in the process of rehabilitating the subject dwellings and upon requesting building permits were advised they must establish the nonconforming use of the four dwelling units on the property. Testimony presented by Petitioners indicated that all four dwellings have existed on the property since 1932. Petitioners indicated that they had been advised that all properties had been occupied continuously and

04-250-SPH

without interruption but for a change in tenancy since their construction. To support Petitioners' position, Petitioners submitted an affidavit of Herman J. Raitt, confirming the existence of the four single family dwelling units on the subject property since 1935.

Mrs. Johnson testified at the hearing that she or her family have either resided or been personally familiar with the subject property since the late 1950s, early 1960s. She indicated that since that time, the properties have been occupied continuously and without interruption.

Zoning came officially to Baltimore County on January 2, 1945, when, pursuant to previous authorization by the General Assembly, the County Commissioners adopted a comprehensive set of zoning regulations.

The Commissioners were first authorized to adopt comprehensive planning and zoning regulations in 1939 (Laws of Maryland, 1939, ch. 715). At the next biennial session of the General Assembly, this authorization was repealed, and a new authorization was enacted (Laws of Md., 1941, ch. 247). Before any such regulations were issued, the Legislature authorized the Commissioners to make special exceptions to the regulations (Laws of Md., 1943, ch. 877). The first regulations were adopted and took effect on January 2, 1945. See Kahl v. Cons. Gas Elec. Light. and Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calhoun v. County Board of Appeals, 262 Md. 265, 277 A.2d 589 (1971).

Section II of those regulations created seven zones, four being residential, one commercial, and two industrial. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A.2d 96 (1978).

Those original regulations provided for nonconforming uses. The statute read as follows:

> "A lawful nonconforming use existing on the effective date of the adoption of these regulations may contin-

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3/13/82
By Petty Williams

04-250-SPH

ue, provided, however, upon any change from such nonconforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use or any discontinuance of such nonconforming use for a period of one year, or in case a nonconforming structure shall be damaged by fire or otherwise to the extent of seventy-five (75%) percent of its value, the right to continue to resume such nonconforming use shall terminate, provided, however, that any such lawful nonconforming use may be extended or enlarged to an extent not more than once again the area of the land used in the original nonconforming use." Section XI, 1945, B.C.Z.R.

Baltimore County adopted a new set of comprehensive zoning regulations on March 30, 1955. The issue of nonconforming uses are dealt with in Section 104 of those regulations. The Section then read:

> "104.1 - A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel or land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

Section 104.1 was changed to its current language on March 15, 1976 by Bill No. 18-76. The current effective regulation reads as follows:

> "A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of

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Date 3/29/89
By Patricia Malone

04-250 SPH

the ground floor area of buildings so used (B.C.Z.R., 1955, Bill No. 18, 1976)".

On August 4, 1980, the current language found in Section 104.2 was added to the B.C.Z.R. by Bill No. 167-80. This regulation placed an exception upon the general nonconforming rule for Special Exception office buildings. The second reads as follows:

"Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that becomes damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. (Bill No. 167, 1980)".

As with all non-conforming use cases, the first task is to determine what lawful non-conforming use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use, and therefore, breaks the continued nature of the non-conforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered non-conforming. See McKemy v. Baltimore County, Md., 39 Md. App.257, 385 A2d. 96 (1978).

It is clear t a use of the subject property known as 2108, 2110, 2112 and 2114 Alma Avenue as four single family dwelling units has not changed since at least 1935 and pre-dates the 1945 zoning regulations. Therefore a nonconforming use exists. The uncontraverted testimony indicates the use of the property as four single family dwelling units has been continuous and without interruption since approximately 1932.

04-250-SPH

After due consideration of the testimony and evidence presented, in the opinion of the Zoning Commissioner, the relief requested sufficiently complies with the requirements of Section 500.14 of the Baltimore County Zoning Regulations (B.C.Z.R.) and should therefore be granted. There is no evidence in the record that the relief requested would adversely affect the health, safety, and/or general welfare of the public. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

The relief requested is in harmony with the general spirit and intent of the Critical Areas legislation for Baltimore County and conforms to the requirements as set forth in Section 500.14 of the B.C.Z.R. In accordance with Section 500.14 of the B.C.Z.R., the Director of the Department of Environmental Protection and Resource Management has submitted recommendations which describe what steps the Petitioner must take to insure that the relief requested complies with the following Chesapeake Bay Critical Areas requirements to:

1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

2) Conserve fish, wildlife, and plant habitat; and

3) Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

These recommendations shall be attached hereto and become a permanent part of the decision rendered in this case. There is no evidence in the record that the relief requested would adversely affect the health, safety, and/or general welfare of the public provided there is

04-250-SPH

compliance with the requirements of the Department of Environmental Protection and Resource Management as more fully described below.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 13th day of March, 1989 that the Petition for Special Hearing to approve the nonconforming use of the four dwellings described herein on the subject property as more particularly described in Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition; and,

IT IS FURTHER ORDERED that the Petitioner shall comply fully and completely with all requirements and recommendations of the Department of Environmental Protection and Resource Management, as set forth in their comments dated January 11, 1989, attached hereto and made a part hereof.

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

04-250 SPH

Date 3/13/89 By Ann Nastarowicz

Tax ID#: 04152100014182 ** PUBLIC RECORD **

Tax ID#: 04152100014182 County: BC
PROPERTY ADDRESS: 2108 ALMA AVE, 1, SPARROWS POINT, MD 21219-2142 Legal Subdiv/Neighborhood: CHESAPEAKE TERRACE
OWNER: , Phone #: () Abs Owner: Y Company: WHISTLER CORPORATION
MAIL ADDRESS: 7613 OLD ROAD BAY FRONT , , BALTIMORE, MD 21219-2425
Care of Name: C/O HOWARD RAMSAY
LEGAL DESCRIPTION: UNIT 1 WHISTLERS LAND COND

Mag/Dist #: 15	Lot:	Block/Square:	Tax Map:
Elec Dist: 15	Legal Unit #: 1	Grid: 22	Map: 111
Section:	Blk Suffix:	Subdiv Ph:	Addl Parcel Flag/#: /
Map Suffix:	Suffix:	Parcel: 127	Sub-Parcel:

TOTAL TAX BILL: $499	State/County Tax: $499	City Tax:	Tax Levy Yr: 2003
Front Foot Fee:	Spec Tax Assmt:	Refuse:	Tax Rate: 1.25
Tax Class:	Homestd/Exempt Status:	Exempt Class: 000	Mult. Class:

ASSESSMENT

Year Assessed	Total Tax Value	Land	Improvement	Land Use	Taxable Assessment
2002	$40,000	$40,000	$0	$	State: $
Previous	$40,000	$40,000	$0	$	Municipal: $
Early	$40,000	$40,000	$0	$	City: $

DEED	Deed Liber: 0	Deed Folio: 0	Deed Type:
Transfer Date	Price	Grantor	Grantee
	$0	WHISTLER CORPORA TION	WHISTLER CORPORATION

PROPERTY DESCRIPTION

Year Built: 1946	Zoning:	Census Trct/Blck: 452100/3	Irregular Lot:
Square Feet: 956	Acreage: 0.02	Land Use: Residential	
Property Class: U	Plat Liber/Folio: 12/99	Property Card:	Quality/Grade: FAIR

Prop Use: RESIDENTIAL CONDOMINIUM

STRUCTURE DESCRIPTION

	Section 1	Section 2	Section 3	Section 4	Section 5
Construction					
Story	2	1			
Area	864	18			

Ext Wall: Siding - Alum/Viny		Roofing: Shingle - Composite	Foundation:	
Stories: 2	Units: 1	Style:		Year Remodeled: 1946
Total Building Area:		Living Area: 882	Base Sq Ft: 450	Model/Unit Type: SINGLE FAMILY UNIT
Patio/Deck Type: DECK		Sq Ft: 96		

Rooms:	Bsmt Type:	Fireplaces:	Garage Type:
Bedrooms:	Bsmt Tot Sq Ft: 0	Fireplace Type:	Garage Sq Ft:
Full Baths: 1	Bsmt Fin Sq Ft:	Attic Type:	Gar Constr:
Half Baths: 0	Bsmt Unfin Sq Ft:	Attic Sq Ft:	Garage Spaces:
Baths: 1	Air Cond:		

Gas:	Heat: Heat Pump(s)	Sewer: PUBLIC	Fuel:
Electric:	Water: PUBLIC	Underground:	Walls:

© 2003 Metropolitan Regional Information Systems, Inc.
Information is believed to be accurate, but should not be relied upon without verification.
Accuracy of square footage, lot size and other information is not guaranteed.

04-250-SPA

Appeal
to: Kristen log.
1/22/04 ucm

LOUIS & NITA SAVADER
6002 HUNT CLUB LANE
BALTIMORE MD 21210
410-464-0220

County Board of Appeals
County Courts Building
401 Bosely Ave
Towson MD 21204

January 19, 2004

RE: 2108 ALMA AVE, W/S Ligman Ave 100' N of the c/l North Dakota Ave
Case No. 04-250-SPH

To Whom It May Concern:

We are sending this letter to comply with the appeals process; we are requesting a special appeal hearing for the above referenced property. The original petition was submitted by Mr. Howard Ramsey. We have purchased this property from Mr. Ramsey effective Jan 6, 2004.

Enclosed is our check for $300, along with this request for an appeal.

Sincerely,
Nita & Louis Savader
Nita & Louis Savader

RECEIVED
JAN 2 2 2004
04-156
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

HOLZER

& LEE

LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

June 29, 2004
#7474

Ms. Kathleen Bianco
Administrator
Board of Appeals
400 Washington Avenue
Room 49
Towson, Maryland 21204

RE: In the Matter Of: Howard Ramsey, Legal Owner
Case No.: 04-250-SPH

Dear Ms. Bianco:

I received your Notice of Postponement of the Tuesday, July 27, 2004 case which has been rescheduled for Wednesday, September 29, 2004. Unfortunately, I have already made reservations to be in Williamsburg, Virginia from Wednesday, September 29th through Sunday, October 3, 2004. I would therefore appreciate your rescheduling this case hopefully earlier than September 29, 2004.

Very truly yours,

J. Carroll Holzer

JCH:mlg

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JUN 30 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Chris Barkley
Home Selling Assistance
9512 Harford Road
Baltimore, MD 21234
(410) 661-2600
fax (410) 661-2601

November 12, 2003

Mr. Timothy Kotroco
Department of Permits & Development Management
County Processing
111 W. Chesapeake Ave
Townson, MD 21204

Dear Sir:

Re: 2108 Alma Avenue, Zoning Verification, Election District 15

I am writing to you in reference to requesting an extension for a building permit for 2108 Alma Avenue.

The house was falling down; therefore, it was demolished for safety reasons. The owners have not had the money to build the new house and decided to sell the property. They understood the deadline and the buyers insisted that the contract was contingent upon building a house on the lot. We would have been able to get the construction started, but Hurricane Isabel delayed the project. We need a few months to file a building application, hire the contractor and start the work. We estimate it will take another 12 months to get the new structure up with a use and occupancy permit.

We request that you would grant us an extension.

Sincerely,

Chris Barkley

Chris Barkley

Consulting Engineers

Established 1975

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

Attention: Carl Richards, Assistant Director

Re: 2108 Alma Ave, Zoning Verification, Election District 15 - Extension

Dear Carl:

Thank you for the telephone meeting that we had on November 11, 2003. Please accept this letter to verify that Jack Dale Associates, Consulting Engineers will be assisting Howard and Jan Ramsey and their realtor, Chris Barkley in securing building permits for the subject lot on 2108 Alma Avenue. Prior to the engineering work starting, we thought it would be in the best interest of the owner to wait until the special hearing was completed; granting a 12-months extension to get the permits, construction, and final use and occupancy for this lot.

Attached to this letter are copies of the permit drawings from 1989 that were used to construct the other three houses on the lot. If you remember in our discussion, the last lot is vacant because the original house was torn down for structural reasons; the owners lack of finances prevented beginning new construction on that lot within the two year period noted in zoning case 89-343-SPH. The lack of finances has resulted in the owner needing to sell the property and obtain this extension primarily for the benefit of the new owners who are under contract at this time.

Ms. Barkley and her clients have attempted to file a building permit in advance of the special hearing, however, there isn't sufficient time for the engineering to be completed for the flood plain elevations and the foundation drawings to current standards thus, we wait the favorable decision of the zoning extension prior to filing the permit.

Sincerely,

Jack Dale Associates, PC

Edward C. Koplin, PE, CEM
MD Professional License # 20782

04-250-SPA

Jack Dale Associates, P.C.
7110 Belair Road, Suite 200 Baltimore, MD 21206-1125 410-665-9400 Fax: 410-665-9402 www.jackdale.com

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

PETITIONER'S SIGN-IN SHEET

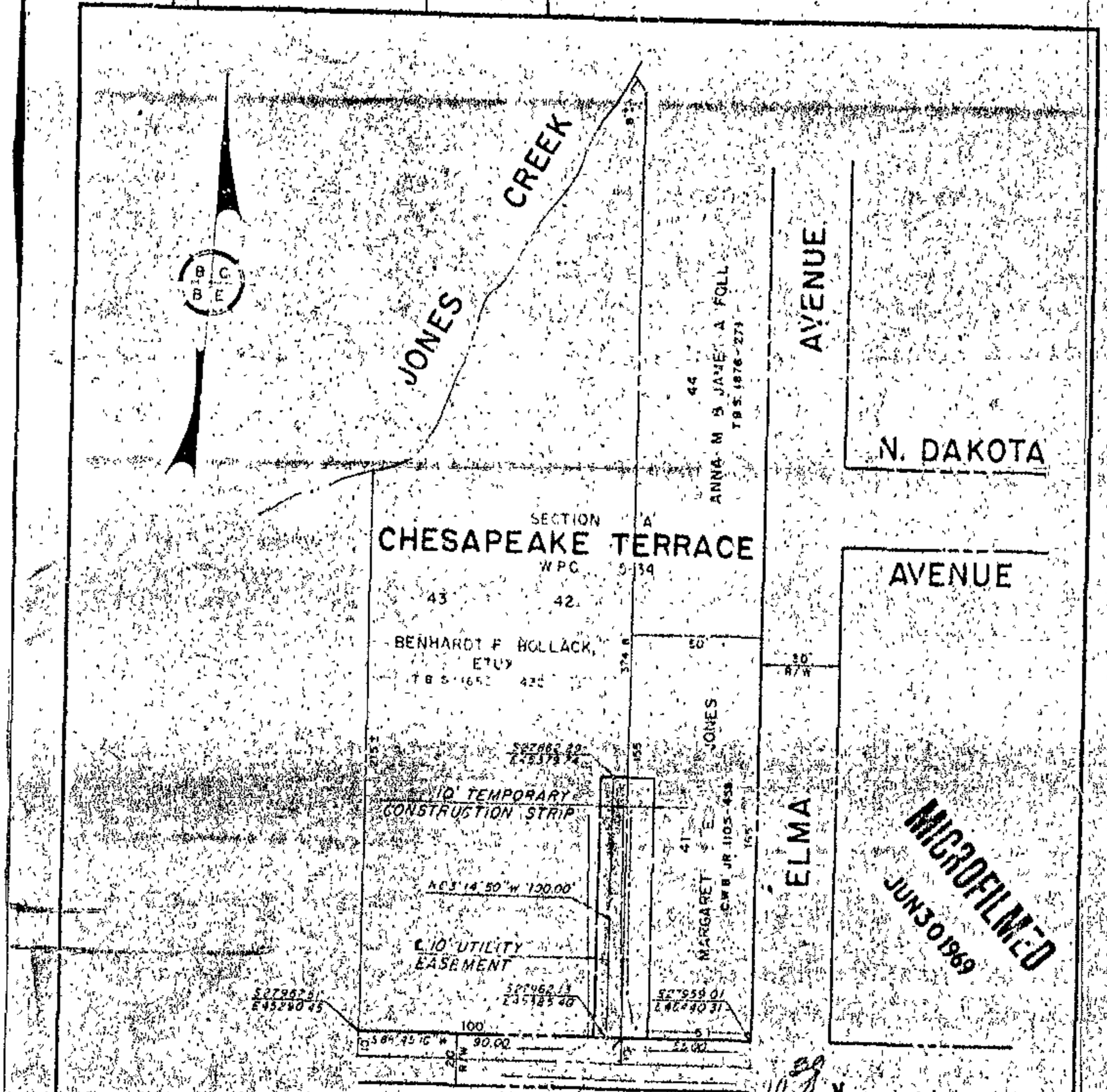
NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Howard Ramsay	7613 Old Road Bay Front	Balto, Md 21219	
Louis + Nita Saladee	6002 Hunt Club Lane	Baltimore, Md 21210	
Chris Barkley	9120 Hinton Ave.	Ba Ho. MD. 21219	
Estelle JOHNSON	2124 ALMA AVE	Balt 21219	(Neighbor)

ACQUISITIONS		
NO.	ACQUIRED FROM	RECORDED
1		
2		
3		
4		
5		

NOTE:

1. VERTICAL LETTERING DENOTES EXISTING PROPERTY LINES.
2. SLANT LETTERING DENOTES PROPOSED CHANGES TO PROPERTIES.
3. ALL AREAS FOUND BY PLANIMETER, UNLESS OTHERWISE NOTED.

LIBER 27 PAGE 549



Rec'd for record MAR 2 1965 at 10 89 M
Ret. R. Gill, Clerk

BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS — BUREAU OF LAND ACQUISITION

PLAN TO ACCOMPANY RIGHT-OF-WAY AGREEMENT — 10' UTILITY EASEMENT - 10' TEMP. CONSTR. STRIP

BUREAU OF LAND ACQUISITION

APPROVED: W. P. Gruss, CHIEF

DATE: 1-14-1965

COORDINATES SHOWN HEREON ARE BASED ON U.G.M.D. TRAVERSE STATIONS OR HOBS, AS FOLLOWS:

X-6973	S261 24.12	E46572.05
X-6977	S266 61.25	E44173.49

William W. Gardner
CONSULTING ENGINEER OR SURVEYOR
DATE 11-17-64 REG. NO. 1956

CONSTRUCTION PLAN NO. 61-834 A-10

D-015

DIVISION OF DRAFTING

APPROVED: SUPERVISOR

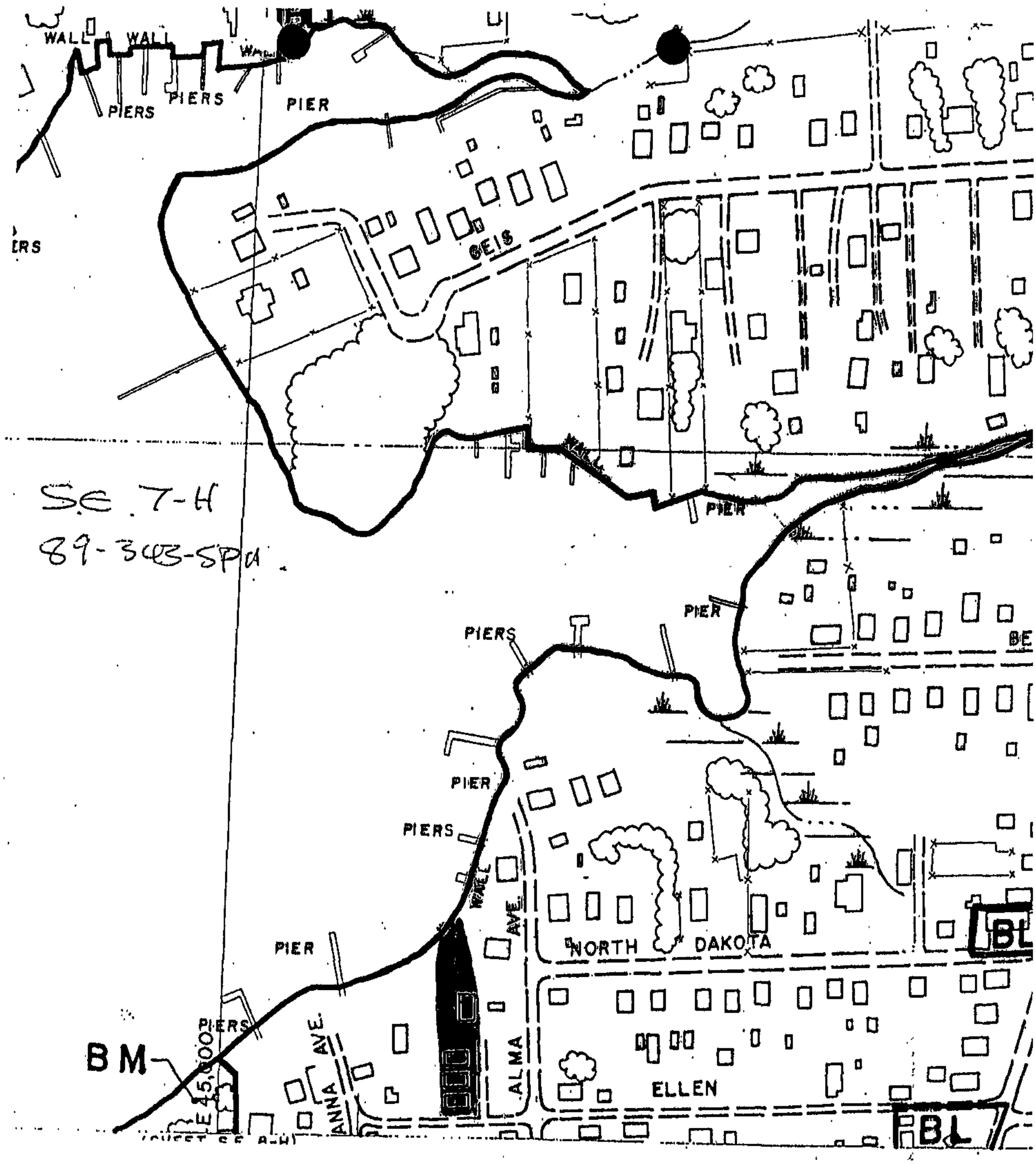
DATE:

DRAWN: R.B.C. CHECKED:

THIS PLAT IS COMPILED FROM DEEDS AND SURVEYS. THE COURSES AND DISTANCES SHOWN ON PROPERTIES ADJOINING THE PROPOSED RIGHT OF WAY ARE THOSE CONTAINED IN THE DEED REFERRED TO BY LIBER AND FOLIO NUMBER AND DO NOT NECESSARILY REFER TO THE MERIDIAN SHOWN HEREON NOR DO THEY IMPLY A CURRENT SURVEY OF SAID PROPERTIES, UNLESS SO NOTED.

AREA TO BE ACQUIRED	SCALE: 1" = 50'
SLOPE AREA	J.O. 1-2-215
EXISTING COUNTY R/W	DISTRICT 15
AREA TO BE RELEASED	RW 64-304-10

04-250-SPH



ZONING MAP

1" = 200'

LOCATION

SHEET

DATE OF PHOTOGRAPHY 1986

EDGEMERE

04-250-SPA

S.E. 7-H

9/1/04 Howard Hennessy - Owner Sandler.
Replace damaged Structure + allow existing non conforming use
SP#/89-343 of remaining 3 structures.
Alma Ave.

Opening Statement.
Jay Carroll Wolzen, Atty for ~~Butler~~ ~~Butler~~ Petitioner.
Pet representation of owner was not at zoning hearing.
Petitioner Exhibit #1 Plat 1989
#2 " 5 pages.
Chesapeake Terr off of Jones Creek Zone DR 5.5
Condo #2108 Razed - damage by water tenant neglect.
Butler Corp Formed -
Owner rebuilt. 1989 determined to be non-conforming
Owner Bought 1988
3/2001 - 2108 damaged Vandalized
3/2002 permit to raze property issued 3/25/02
11/02 - Building permit - not found. 11/20/02 issued
Had financial problem & Storm caused delay. B/P expired 11/03
8/26/03 R/E agent - Chris Barkley tried to get extension on
building permit 104.2 Zoning Reg 2 yr limit
Exhibit #3 letter req extension of permit via engineer.
11/12/03 11/20/03 permit deadline
Exhibit #4 request extension for 1 yr. by R/E agent
Ex #5 letter from permits 104.2 ventab 11/20/03
Zoning off did not address issue of Zoning - Non-conforming use.
Exhibit #6 - Chris Barkley letter
Exhibit ~~#6~~ 6-B additional comments from zoning

~~Issue~~ - Question - Did Zoning have permission to extend permit
Sect 104.1 non-conforming use.
104.2 exception language. (Causality define)
does not play into argument - per counsel. Critical Area issue. Charyak
Can permit be extended, By whom? reason for extension.

C Attorney:
Causality - damage - extent. % of damage

Witness: Mr Louis Sarada

Did not attend previous hearing

Got put in contract to purchase w/contingent req rebuilding destroyed building #1

Razed due to tenant (emotional problem) caused damage.

Code 1988 when unit redone & sold as Condo unit

unit share cost of maintenance, water bills, etc.

If permit not granted - problem in value, definition of condo

World damage.

— Exhibit #8 Condo Documents.

Extension needed ~~a support~~ to support mortgage, enforce voting rights, keep condo assoc. ~~with~~ in operation.

Footer still in tack + conform.

Effects resale value. Could have completed with regulation by starting minimal construction.

Now Now Own Property, settled 1/04

Time frame problem - financial issues. Storm. 2003

Parking? #

Co. John Alexander.

X — By Attorney

Contract contingency expected.

6.7 in Condo doc. 2/3 to be rebuilt Prop burned

Obligation to Build not issue? maybe Mortgage will object.

Manage properties + is investor

Exhibit #9

Memo from Atty: Oct 11, 04'

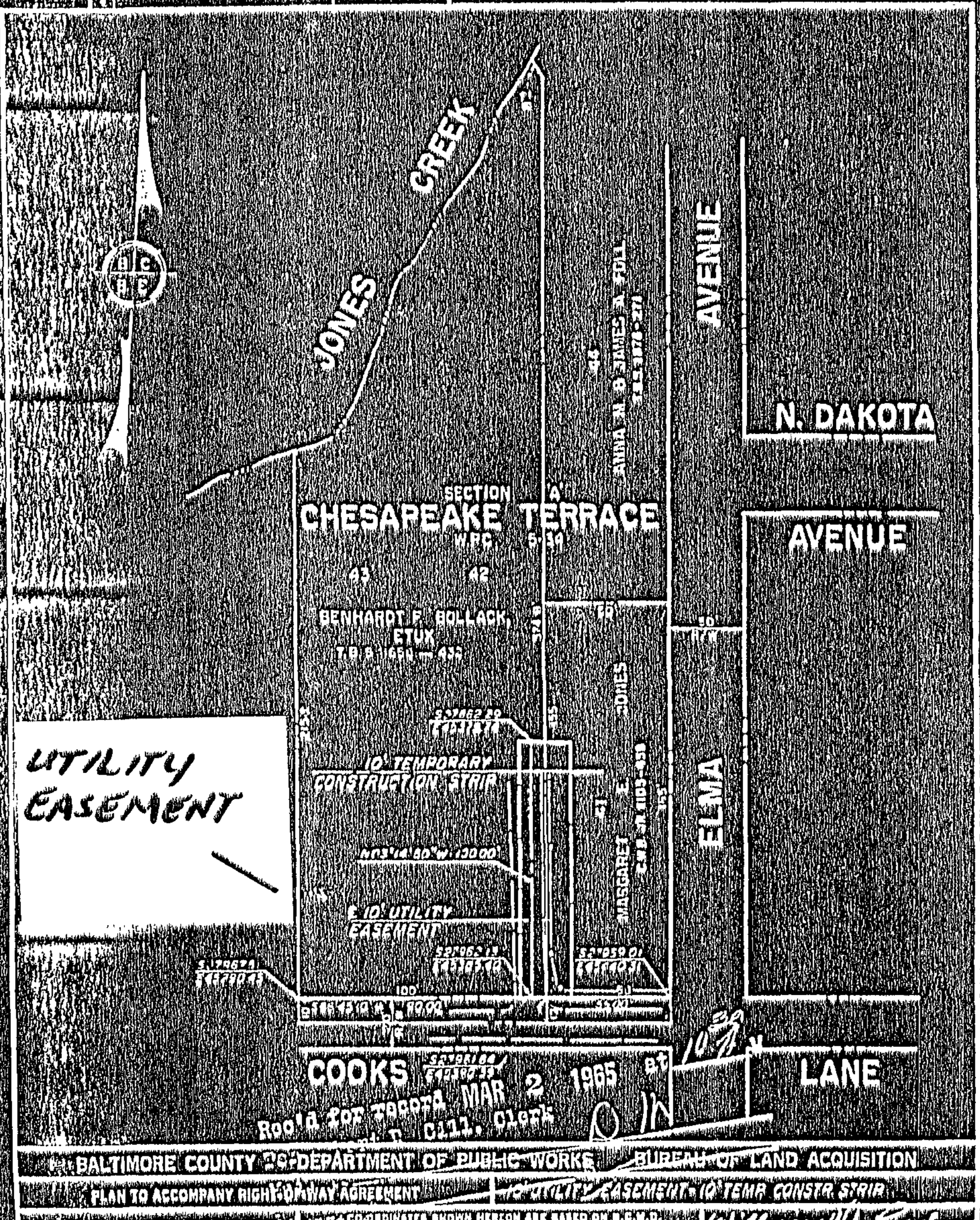
Reviewed
9/1/04

11/21/03 bombay report.

ACQUISITIONS		
	ACQUIRED FROM	RECORDED

NOTE:
1. VERTICAL LETTERING REMOVES PROPOSED RIGHT OF WAY LINES.
2. SLANT LETTERING REMOVES PROPOSED CHANGES TO PROPERTIES.
3. ALL AREAS FOUND BY PLANIMETER, UNLESS OTHERWISE NOTED.

LIBER 4427 PAGE 549



BALTIMORE COUNTY — DEPARTMENT OF PUBLIC WORKS — BUREAU OF LAND ACQUISITION

PLAN TO ACCOMPANY RIGHT OF WAY AGREEMENT — UTILITY EASEMENT — 10' TEMP. CONSTR. STRIP

BUREAU OF LAND ACQUISITION
APPROVED: W. P. Jones CHIEF
DATE: 1-19-1965

COORDINATES SHOWN HEREON ARE BASED ON B.C.M.P. TRAVERSE STATIONS OR MUNI. AS FOLLOWS:

X-6973	S26124.12	E40872.05
X-6977	S26661.25	E44173.48

CONSTRUCTION PLAN NO. 64-A34 A-10

William H. Fardon
CONSULTING ENGINEER OR SURVEYOR
DATE 11-17-64 REG. NO. 1992

DIVISION OF DRAFTING
APPROVED: [illegible] SUPERVISOR
DATE: [illegible]

DRAWN: R.B.C. CHECKED:

THIS PLAT IS COMPILED FROM DEEDS AND SURVEYS. THE COURSES AND DISTANCES SHOWN ON PROPERTIES ADJOINING THE PROPOSED RIGHT OF WAY ARE THOSE CONTAINED IN THE DEED REFERRED TO BY LIBER AND FOLIO NUMBER AND DO NOT NECESSARILY REFER TO THE MERIDIAN SHOWN HEREON NOR DO THEY IMPLY A CURRENT SURVEY OF SAID PROPERTIES UNLESS SO NOTED.

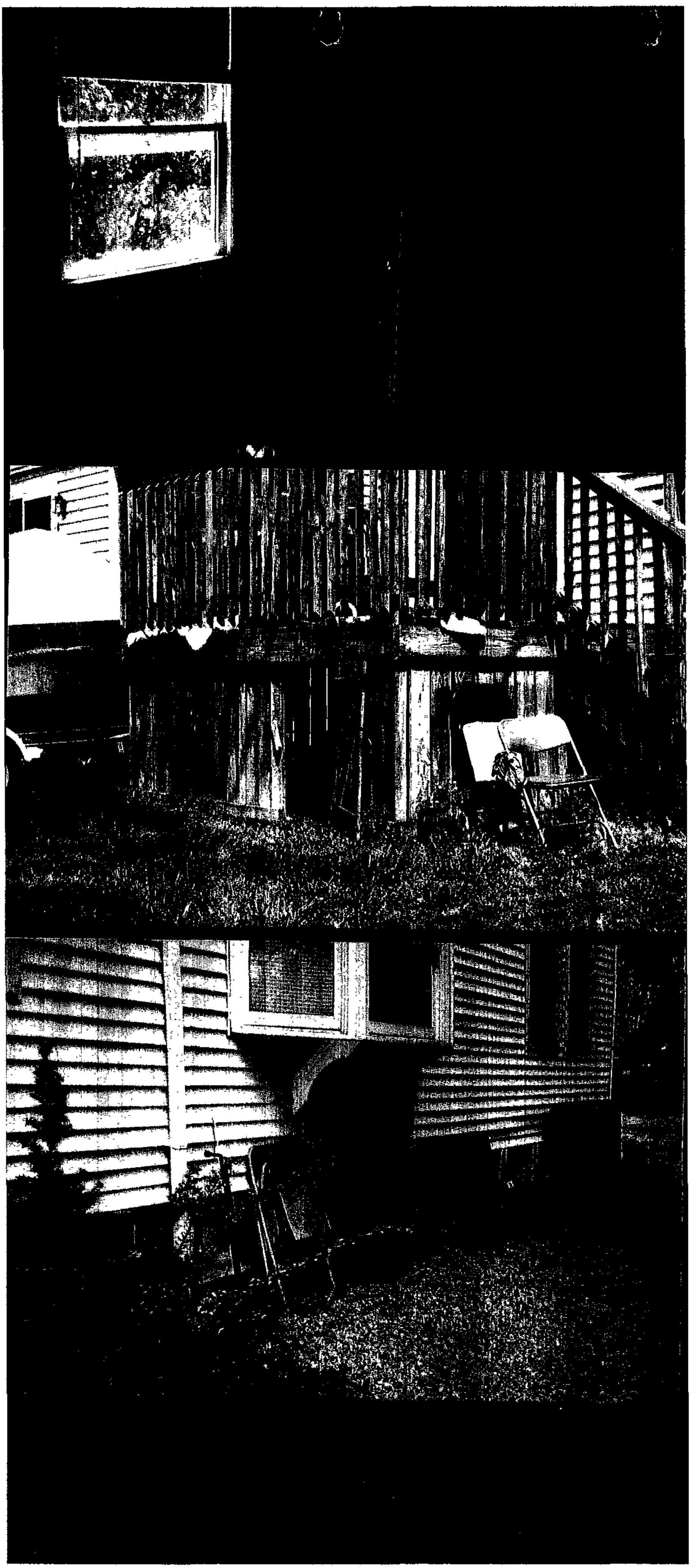
	AREA TO BE ACQUIRED
	SLOPE AREA
	EXISTING COUNTY R/W
	AREA TO BE RELEASED

SCALE: 1" = 50'
J.O. 1-2-215
DISTRICT: 15
RW 64-304-10

04-250 SPG

2108 ALMA AVE

DAMAGES



CASULTY
DAMAGES

2108
ALMA
AVE

04-250-SPH
Ramsay i Savader
9-01-04

Verified 9/01/04

Petitioners Exhibits

✓1 Plat of Dwelling

✓2 May 1989 Plat - 5 pages total

✓3 Letter requesting extension

✓4A Letter Barkley to Katroco
B Letter - Fax to Katroco

✓5A Letter from Permits - Oct 03
B Pet. for Sp. H.

✓7 Interoffice Memo from Kellen to Katroco

(Need copy) ✓6A Barkely Pet. for Special Hearing before Review

(Need copy) B- Same Pet. with

✓8 Condo Docs.

✓9 Letter - American Diecu Homes

No Protestants/PC exhibits

WAP/Condo-2
10/18/88/hmk

Pet #8

CONDOMINIUM MASTER DEED AND DECLARATION

THIS CONDOMINIUM MASTER DEED AND DECLARATION is made this ____ day of _____ 1989, by THE WHISTLER CORPORATION a Maryland corporation ("Grantor") pursuant to the provisions of Section 11-101 et seq., of the Real Property Article of the Annotated Code of Maryland (1988 Replacement Volume), as amended.

1. Property. The Grantor, pursuant to the statutory provisions above, does hereby expressly declare its desire to and do hereby submit the property described below to the condominium regime permitted by such statutory provisions, and does hereby establish a condominium regime under authority of such provisions to be known as "Whistler's Landing Condominium". The Grantor establish this condominium regime with respect to the Grantor's fee simple interest in the following described property: Lots 42 asnd 43 Section A Chesapeake Terrace as shown on Plat of Chesapeake Terrace recorded among the Land Records of Baltimore County, Maryland in Plat Book W.P.C.5, folio 34, and more particularly described as follows:

ALL that parcel or lot of ground situate in the County of Baltimore, in the State of Maryland as shown on the Plat entitled "Condominium Plat-Whistler's Landing Condominium" which said Plat is recorded or intended to be recorded among the Land Records of Baltimore County Maryland contemporaneously with the recording of this Master Deed and Declarations.

TOGETHER with the buildings thereon, and all the rights, alleys, ways, waters, privileges, appertenances and advantages to the same belonging or in anywise appertaining

Pet. Ex. 3

Consulting Engineers

Established 1975

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

Attention: Carl Richards, Assistant Director

Re: 2108 Alma Ave, Zoning Verification, Election District 15 - Extension

Dear Carl:

Thank you for the telephone meeting that we had on November 11, 2003. Please accept this letter to verify that Jack Dale Associates, Consulting Engineers will be assisting Howard and Jan Ramsey and their realtor, Chris Barkley in securing building permits for the subject lot on 2108 Alma Avenue. Prior to the engineering work starting, we thought it would be in the best interest of the owner to wait until the special hearing was completed; granting a 12-months extension to get the permits, construction, and final use and occupancy for this lot.

Attached to this letter are copies of the permit drawings from 1989 that were used to construct the other three houses on the lot. If you remember in our discussion, the last lot is vacant because the original house was torn down for structural reasons; the owners lack of finances prevented beginning new construction on that lot within the two year period noted in zoning case 89-343-SPH. The lack of finances has resulted in the owner needing to sell the property and obtain this extension primarily for the benefit of the new owners who are under contract at this time.

Ms. Barkley and her clients have attempted to file a building permit in advance of the special hearing, however, there isn't sufficient time for the engineering to be completed for the flood plain elevations and the foundation drawings to current standards thus, we wait the favorable decision of the zoning extension prior to filing the permit.

Sincerely,

Jack Dale Associates, PC

Edward C. Koplin, PE, CEM
MD Professional License # 20782

04-250-SPA

Jack Dale Associates, P.C.
7110 Belair Road, Suite 200 Baltimore, MD 21206-1125 410-665-9400 Fax: 410-665-9402 www.jackdale.com

Pet. Ex 4A

Chris Barkley
Home Selling Assistance
9512 Harford Road
Baltimore, MD 21234
(410) 661-2600
fax (410) 661-2601

November 12, 2003

Mr. Timothy Kotroco
Department of Permits & Development Management
County Processing
111 W. Chesapeake Ave
Townson, MD 21204

Dear Sir:

Re: 2108 Alma Avenue, Zoning Verification, Election District 15

I am writing to you in reference to requesting an extension for a building permit for 2108 Alma Avenue.

The house was falling down; therefore, it was demolished for safety reasons. The owners have not had the money to build the new house and decided to sell the property. They understood the deadline and the buyers insisted that the contract was contingent upon building a house on the lot. We would have been able to get the construction started, but Hurricane Isabel delayed the project. We need a few months to file a building application, hire the contractor and start the work. We estimate it will take another 12 months to get the new structure up with a use and occupancy permit.

We request that you would grant us an extension.

Sincerely,

Chris Barkley

Chris Barkley

Pet. Ex 4B

File

Home Selling Assistance

FAX TRANSMITTAL

DATE: 11.12.03

FAX NUMBER: 410.887.~~5780~~ 5708

ATTENTION: Timothy Kotroco / Carl Richards

NUMBER OF PAGES: 2

RE: 2108 Alma Ave.

URGENT: ☐ FOR REVIEW: ☐ PLEASE COMMENT: ☐ PLEASE REPLY: ☑

Please be sure that Mr. Timothy Kotroco receives this letter.

This is in reference to my appointment Thursday @ 10:00 AM

Thank you

From: Chris Barkley

Telephone # (410) 661-2600 Fax # (410) 661-2601

Department of Permi
Development Management

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Baltimore County

James T. Smith, Jr, County Executive
Timothy M. Kotroco, Director

OR 16/NA 887-3391
CORESPONDENCE
(STOCK PLANS)
887-3900
PERMITS
SITE PLAN

October 23, 2003

Howard and Jan Ramsay
7613 Old Road Bay
Edgemere, Maryland 21219

Dear Mr. and Mrs. Ramsay:

Re: 2108 Alma Ave, Zoning Verification, Election District 15

The subject property is zoned DR-5.5 (Residential Density-5.5 houses per acre). I understand from Ms. Chris Barkley, the realtor, that there were 4 houses on one lot. There was a Zoning Special Hearing in March 1989 to approve a non-conforming use of the four dwellings. It was granted subject to several conditions, including Section 104.1, which states that discontinuation of a nonconforming use for a year or more ends its nonconforming status, and 104.2 which says that a structure damaged to any extent or destroyed by fire or other casualty may be restored within 2 years of such destruction, but may not be enlarged. If you can show that the building in question was razed as a result of such a casualty, you have until November 20, 2003 to begin the rebuilding process.

Enclosed are copies of the order for zoning case # 89-343-SPH, a portion of zoning map #SE 7-H, and a portion of the case file's exhibit #1 showing the site plan of the property at the time the hearing was approved.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

John R. Alexander
Planner II
Zoning Review

Pet Ex 5A

Enclosure

c: Letter File

89-450-SPH

Pet Ex 5B

IN RE: PETITION FOR SPECIAL HEARING
N/S Ligman Avenue, 65' W of
the c/l of Alma Avenue
(2108, 2110, 2112 and 2114
Alma Avenue)
15th Election District
7th Councilmanic District
The Whistler Corporation
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 89-343-SPH
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve the nonconforming use of the four dwellings described herein on the subject property as more particularly described in Petitioner's Exhibit 1.

The Petitioners, by Mr. & Mrs. Howard W. Ramsay, President and Secretary, respectively, appeared, testified, and were represented by Westin A. Park, Esquire. Estelle Johnson, a nearby resident, appeared as an interested party. There were no Protestants.

Testimony indicated that the subject property, known as 2108, 2110, 2112 and 2114 Alma Avenue, also known as Elma Avenue, consists of 0.66 acres, zoned D.R. 5.5, and is improved with four single family dwelling units. Petitioners testified they purchased the property in November 1988 and that at the time of purchase, the property was described as Lots 42 and 43 of Section A, Chesapeake Terrace. The property is located within the Chesapeake Bay Critical Areas and abuts Jones Creek. Testimony indicated that Petitioners are in the process of rehabilitating the subject dwellings and upon requesting building permits were advised they must establish the nonconforming use of the four dwelling units on the property. Testimony presented by Petitioners indicated that all four dwellings have existed on the property since 1932. Petitioners indicated that they had been advised that all properties had been occupied continuously and

CH-250-SPH

without interruption but for a change in tenancy since their construction. To support Petitioners' position, Petitioners submitted an affidavit of Herman J. Raitt, confirming the existence of the four single family dwelling units on the subject property since 1935.

Mrs. Johnson testified at the hearing that she or her family have either resided or been personally familiar with the subject property since the late 1950s, early 1960s. She indicated that since that time, the properties have been occupied continuously and without interruption.

Zoning came officially to Baltimore County on January 2, 1945, when, pursuant to previous authorization by the General Assembly, the County Commissioners adopted a comprehensive set of zoning regulations.

The Commissioners were first authorized to adopt comprehensive planning and zoning regulations in 1939 (Laws of Maryland, 1939, ch. 715). At the next biennial session of the General Assembly, this authorization was repealed, and a new authorization was enacted (Laws of Md., 1941, ch. 247). Before any such regulations were issued, the Legislature authorized the Commissioners to make special exceptions to the regulations (Laws of Md., 1943, ch. 877). The first regulations were adopted and took effect on January 2, 1945. See Kahl v. Cons. Gas Elec. Light. and Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calhoun v. County Board of Appeals, 262 Md. 265, 277 A.2d 589 (1971).

Section II of those regulations created seven zones, four being residential, one commercial, and two industrial. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A.2d 96 (1978).

Those original regulations provided for nonconforming uses. The statute read as follows:

> "A lawful nonconforming use existing on the effective date of the adoption of these regulations may contin-

RECEIVED FOR FILING
3/13/87
By Petitioner

84-150 SPH

ue, provided, however, upon any change from such nonconforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use or any discontinuance of such nonconforming use for a period of one year, or in case a nonconforming structure shall be damaged by fire or otherwise to the extent of seventy-five (75%) percent of its value, the right to continue to resume such nonconforming use shall terminate, provided, however, that any such lawful nonconforming use may be extended or enlarged to an extent not more than once again the area of the land used in the original nonconforming use." Section XI, 1945, B.C.Z.R.

Baltimore County adopted a new set of comprehensive zoning regulations on March 30, 1955. The issue of nonconforming uses are dealt with in Section 104 of those regulations. The Section then read:

"104.1 - A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel or land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

Section 104.1 was changed to its current language on March 15, 1976 by Bill No. 18-76. The current effective regulation reads as follows:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of

04.250 SPU

ORDERED FOR FILING
By Ted Zeller

the ground floor area of buildings so used. (B.C.Z.R., 1955, Bill No. 18, 1976)".

On August 4, 1980, the current language found in Section 104.2 was added to the B.C.Z.R. by Bill No. 167-80. This regulation placed an exception upon the general nonconforming rule for Special Exception office buildings. The second reads as follows:

"Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that becomes damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. (Bill No. 167, 1980)"

As with all non-conforming use cases, the first task is to determine what lawful non-conforming use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use, and therefore breaks the continued nature of the non-conforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered non-conforming. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A2d. 96 (1978).

It is clear t a use of the subject property known as 2108, 2110, 2112 and 2114 Alma Avenue as four single family dwelling units has not changed since at least 1935 and pre-dates the 1945 zoning regulations. Therefore a nonconforming use exists. The uncontraverted testimony indicates the use of the property as four single family dwelling units has been continuous and without interruption since approximately 1932.

04-250-SPH

CONFORM FILING
Date 3/18/80
By

After due consideration of the testimony and evidence presented, in the opinion of the Zoning Commissioner, the relief requested sufficiently complies with the requirements of Section 500.14 of the Baltimore County Zoning Regulations (B.C.Z.R.) and should therefore be granted. There is no evidence in the record that the relief requested would adversely affect the health, safety, and/or general welfare of the public. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the petitioner.

The relief requested is in harmony with the general spirit and intent of the Critical Areas legislation for Baltimore County and conforms to the requirements as set forth in Section 500.14 of the B.C.Z.R. In accordance with Section 500.14 of the B.C.Z.R., the Director of the Department of Environmental Protection and Resource Management has submitted recommendations which describe what steps the Petitioner must take to insure that the relief requested complies with the following Chesapeake Bay Critical Areas requirements to:

1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

2) Conserve fish, wildlife, and plant habitat; and

3) Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

These recommendations shall be attached hereto and become a permanent part of the decision rendered in this case. There is no evidence in the record that the relief requested would adversely affect the health, safety, and/or general welfare of the public provided there is

94-150-SPH

compliance with the requirements of the Department of Environmental Protection and Resource Management as more fully described below.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 13th day of March, 1989 that the Petition for Special Hearing to approve the nonconforming use of the four dwellings described herein on the subject property as more particularly described in Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition; and,

IT IS FURTHER ORDERED that the Petitioner shall comply fully and completely with all requirements and recommendations of the Department of Environmental Protection and Resource Management, as set forth in their comments dated January 11, 1989, attached hereto and made a part hereof.

Date 3/13/89
By Patti Williams

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

04-250 SPH

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2108 ALMA AVE

which is presently zoned DR 5.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

EXTENSION OF ZONING CASE # 89-343-SPH

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Louis + Nita Savader
Name - Type or Print

Signature

6602 Hunt Club Rd
Address — Telephone No.

Roland Park MD 21210
City — State — Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address — Telephone No.

City — State — Zip Code

Legal Owner(s):

Howard Ramsay
Name - Type or Print

Howard Ramsay
Signature

Name - Type or Print

Signature

7613 OLD ROAD BAY 477-505
Address — Telephone No.

EDGEMERE, MD 21219
City — State — Zip Code

Representative to be Contacted:

Chris Barkley - REALTOR
Name

9120 HINTON AVE 477-0007
Address — Telephone No.

BALTO. MD 21219
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By _____ Date _____

Case No. _____

REV 9/15/98

Pet #6

Tex 6B

Petition for Special Hearin

to the Zoning Commissioner of Baltimore Coun

for the property located at 2108 ALMA AV

which is presently zoned DR 5.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, le owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto a made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimo County, to determine whether or not the Zoning Commissioner should approve A 1 YEAR EXTENSION OF THE TWO YEAR LIMITATION ON A STRUCTURE REMOVED DUE TO DAMAGE PER SECT. 104.2 BCZR, AND DUE TO EXPIRE NOV. 29 & EXTENSION OF ZONING CASE # 89-343-SPH TO PERMIT ALL EXISTING NON-CONFORMING USES ON THE SUBJECT PROPERTY

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Louis + Nita Savader
Name - Type or Print

Signature

6602 Hunt Club Rd.
Address — Telephone No.

Roland Park MD 21210
City — State — Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address — Telephone No.

City — State — Zip Code

Legal Owner(s):

Howard Ramsay
Name - Type or Print

Howard Ramsay
Signature

Name - Type or Print

Signature

7613 OLD ROAD BAY 477-505
Address — Telephone No.

EDGEMERE, MD 21219
City — State — Zip Code

Representative to be Contacted:

Chris Barkley - REALTOR
Name

9120 HINTON AVE 477-0007
Address — Telephone No.

BALTO. MD 21219
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By SAA/WCR Date 11-14-03

Case No. 04-250-SPH

REV 9/15/98

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: November 28, 2003

RECEIVED
DEC 2003
ZONING COMMISSIONER

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case 04-222 and 04-250**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared By: Mark A Cunningham

Section Chief: Lyn Lanham

AFK/LL

Pet Ex 7

Pet Ex 9

American Dream Homes Inc.
8237 Philadelphia Rd.
Baltimore MD 21237

August 3, 2004

To Whom It May Concern:

Re: 2108 Alma Ave., Baltimore MD

Please be advised that the footer (partial foundation) from the previous dwelling still exists and has been covered over with sand and gravel material to keep it from deteriorating, as well as safety concerns so that it may be used when construction begins on the rest of the dwelling.

It would not be difficult to remove the covering material to start construction on the rest of the foundation in 1 day.

David Mcnew, President

2108 Alma Ave

Map Produced By Baltimore County GIS Services
Production Date: August 17, 2004
Aerial Photography From April 2002

0 25 50 100 150 200 Feet

Map 1

04-250-SPH

PLAT TO ACCOMPANY PETITION FOR ZONING ☐ VARIANCE ☑ SPECIAL HEARING

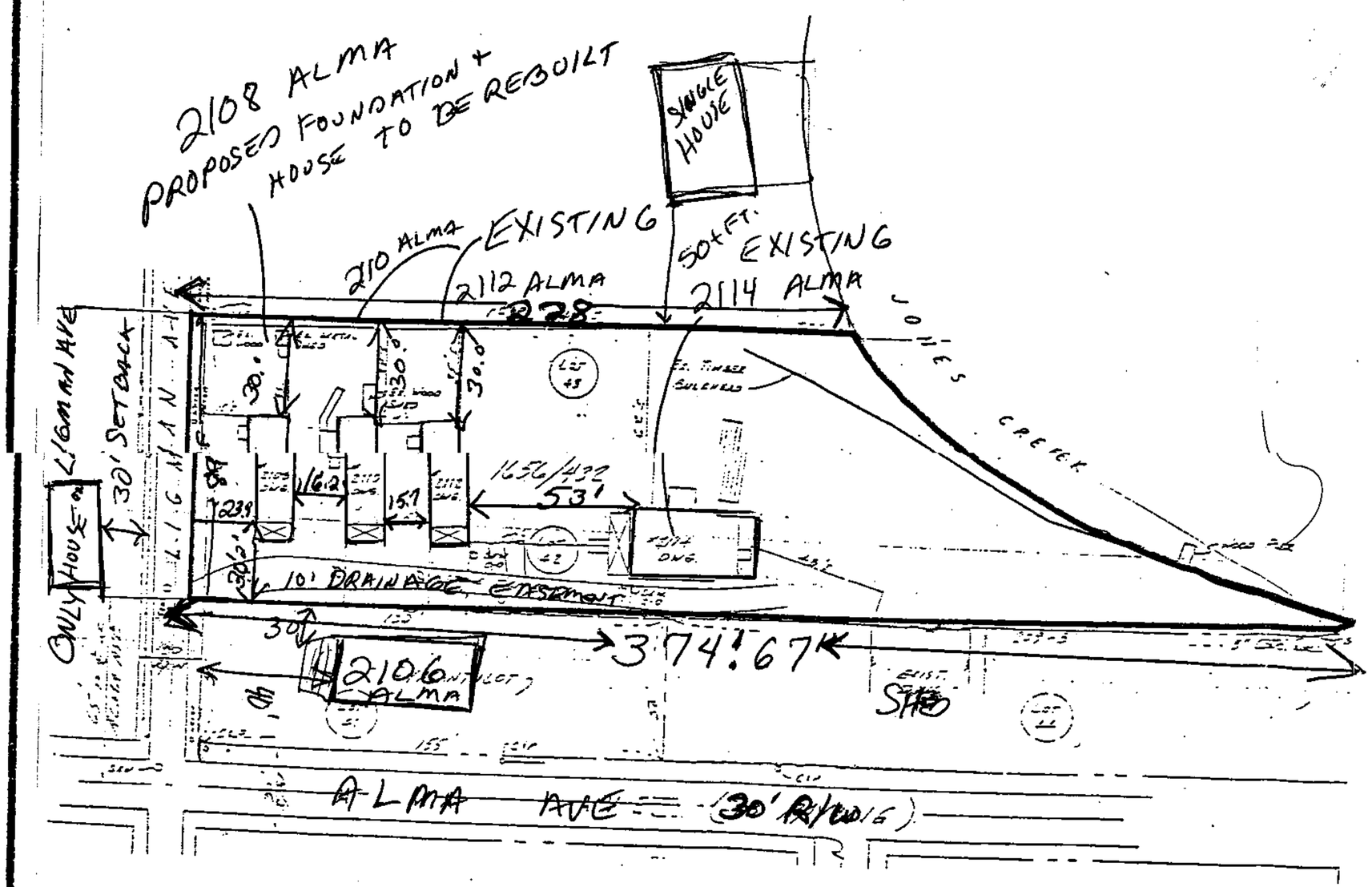
PROPERTY ADDRESS 2108 ALMA AVE

SUBDIVISION NAME Chesapeake Terrace

PLAT BOOK # 12 FOLIO # 99 LOT # 127 SECTION # III

OWNER Howard Ramsay

SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION



NORTH

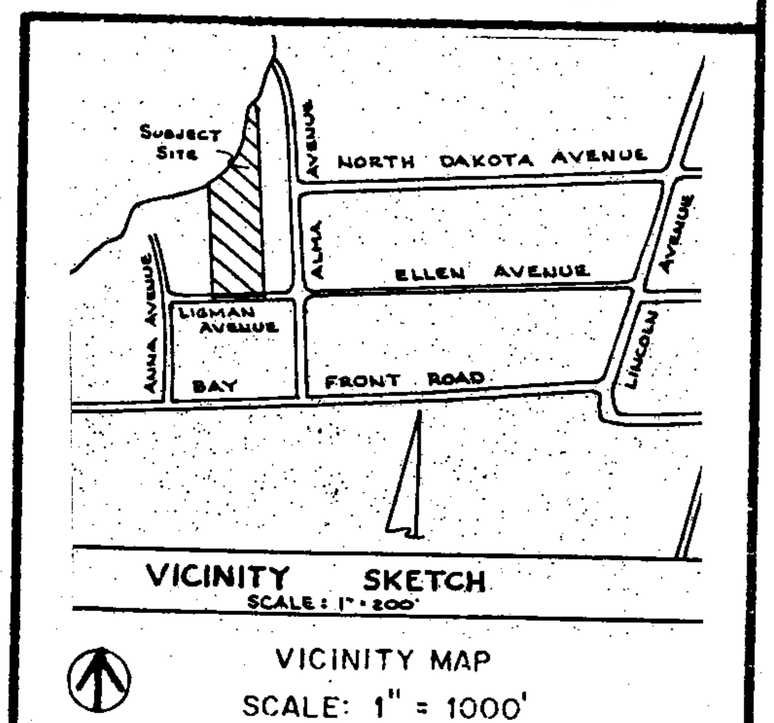
WHISTLERS LANDING CONDOMINIUM
15th DISTRICT BALTIMORE CO. MD.

ELEVATION 10 TO 12FT.

11-12-03

PREPARED BY Chris Bankley

SCALE OF DRAWING: 1" = 50'



VICINITY SKETCH
SCALE: 1" = 200'

VICINITY MAP
SCALE: 1" = 1000'

LOCATION INFORMATION

ELECTION DISTRICT 15

COUNCILMANIC DISTRICT 7

1" = 200' SCALE MAP # SE 7-H

ZONING DR 5.5

LOT SIZE ACREAGE ← 0.668 ~~SQUARE FEET~~

	PUBLIC	PRIVATE
SEWER	☑	☐
WATER	☑	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☑	☐
100 YEAR FLOOD PLAIN	☑	☐
HISTORIC PROPERTY/ BUILDING	☐	☒

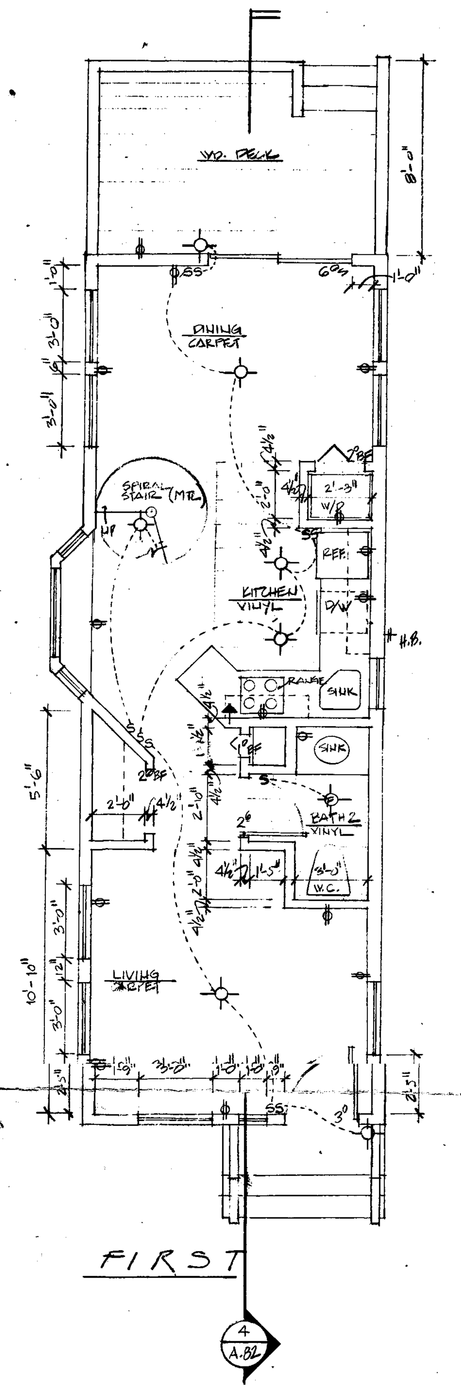
PRIOR ZONING HEARING 89-343-SPH

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM #	CASE #
SDJ		04-250-SPH

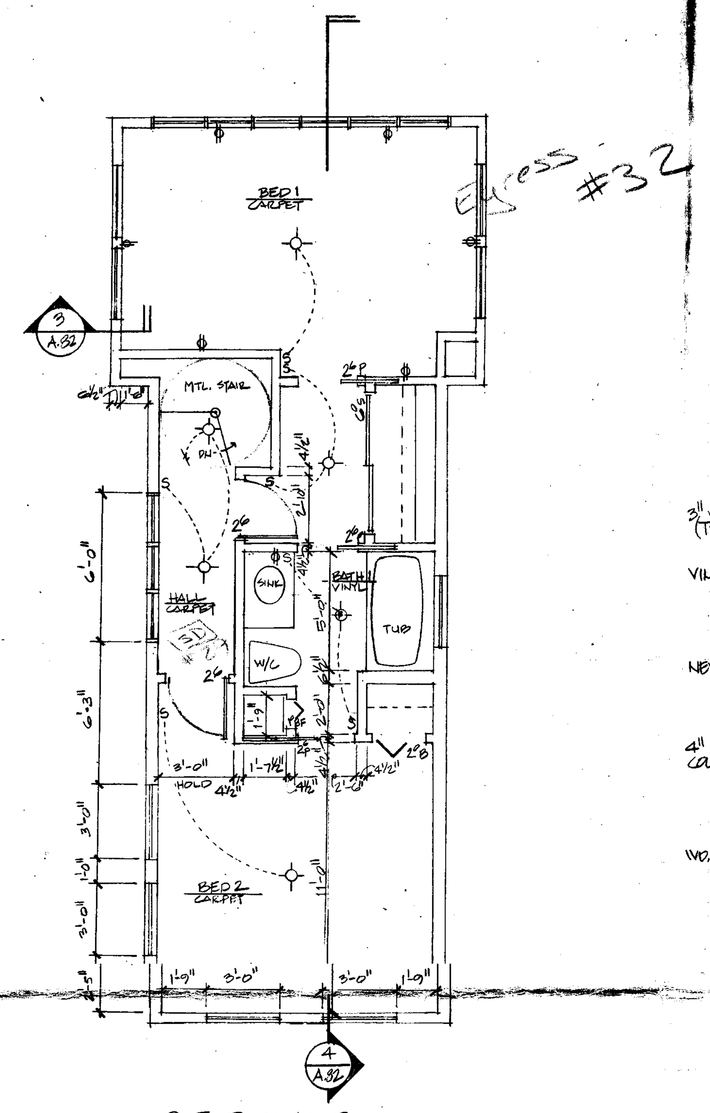
-15-

Pet #1

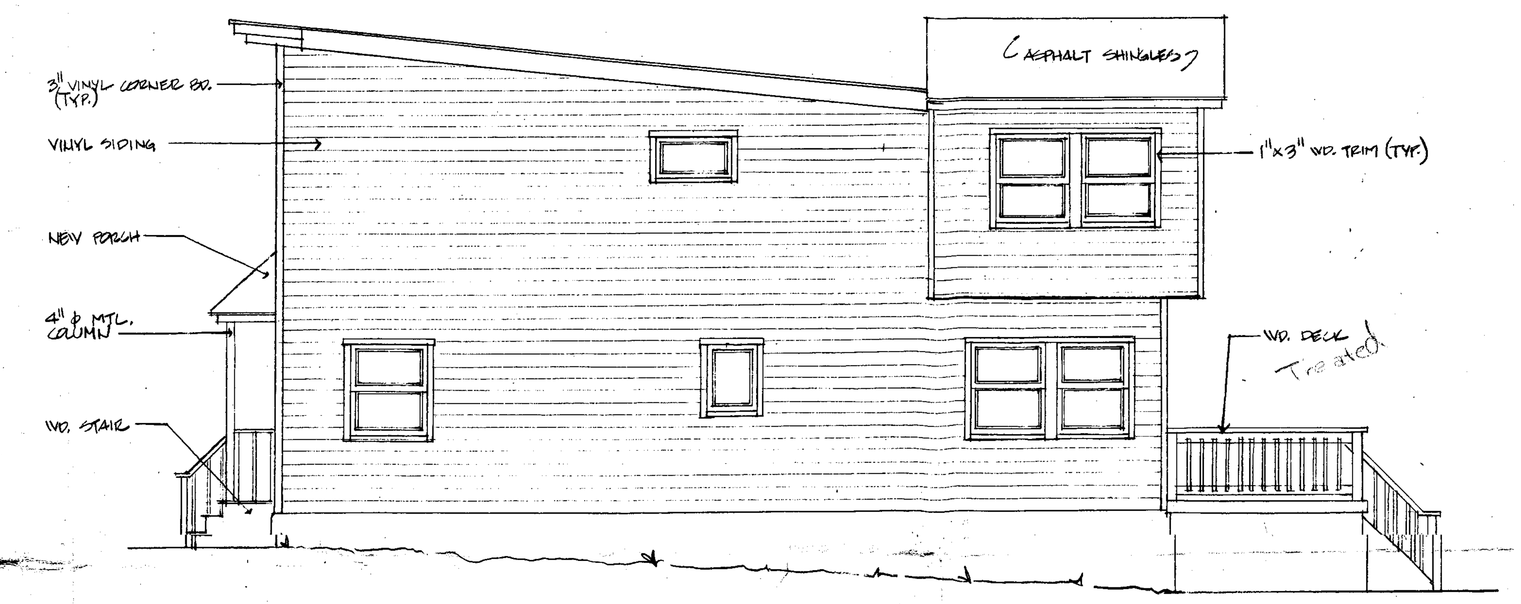


FIRST

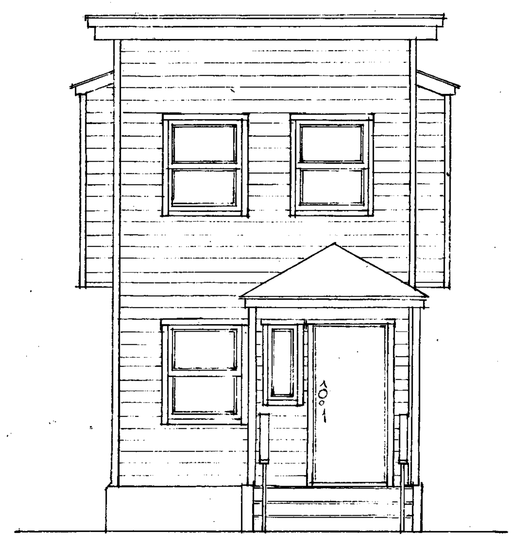
NOTE: IN BASEMENT PROVIDE ELEC. FOR HEAT PUMP, ELEC. W/H. & OVERHEAD FIXTURE W/ PULL STRING & WALL SW.



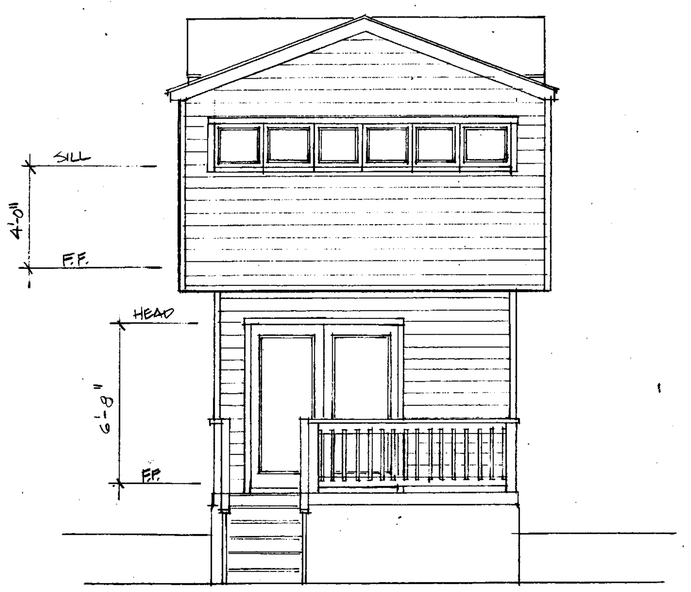
SECOND



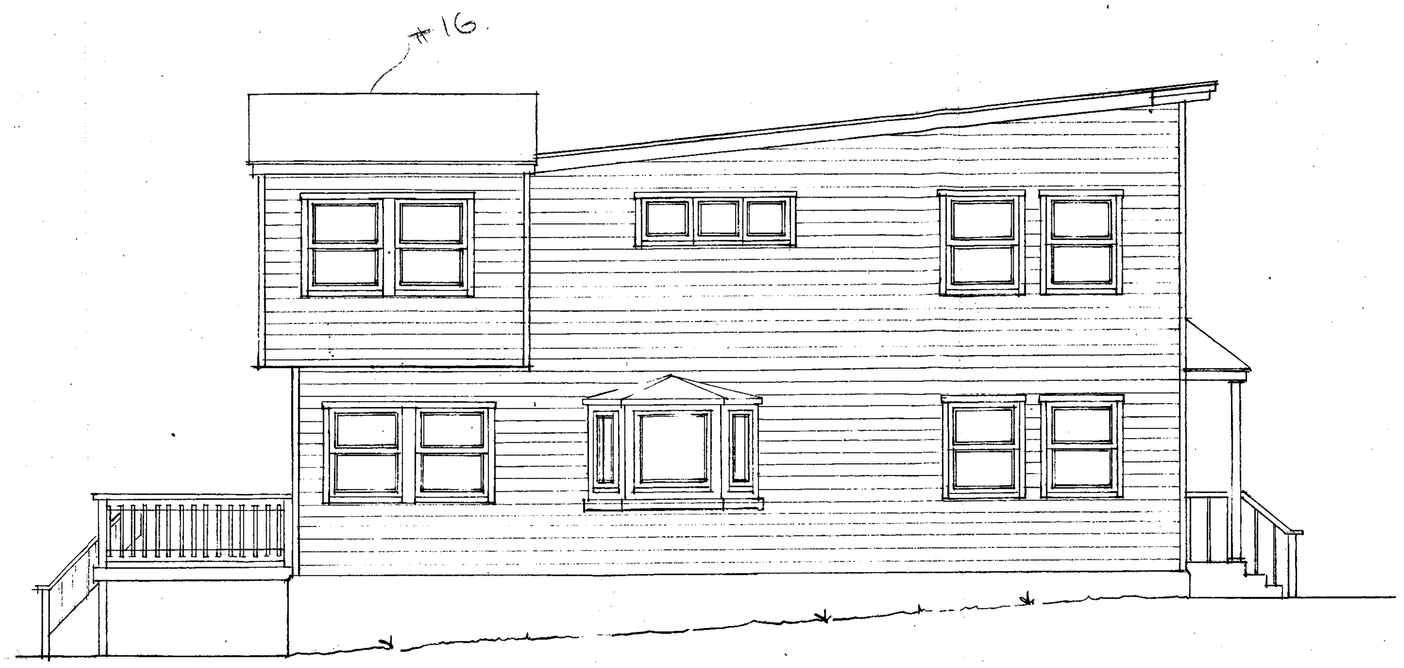
NORTH



EAST



WEST



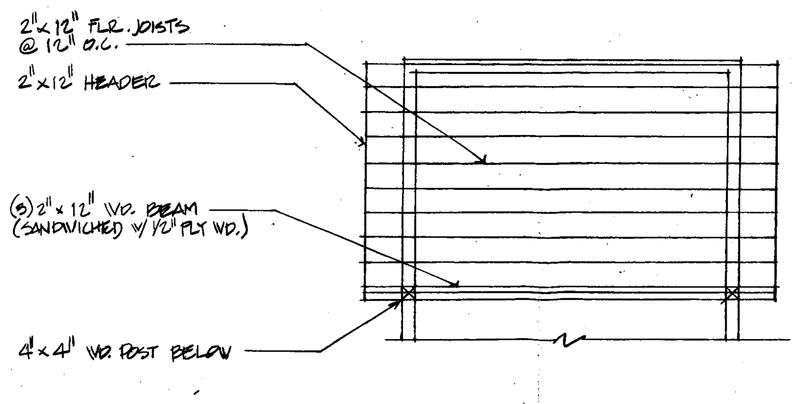
SOUTH

A.81

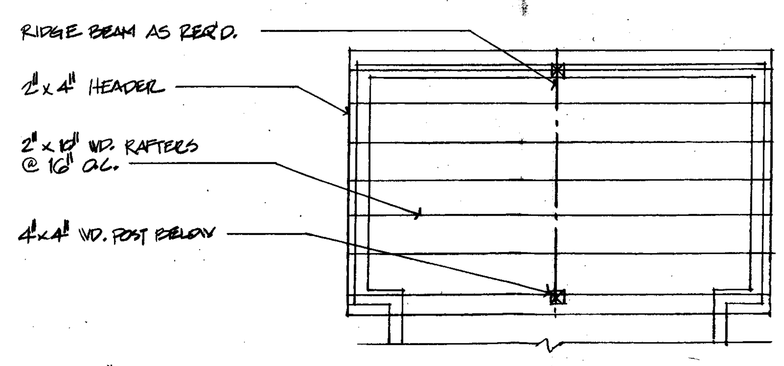
SCALE: 1/4"=1'-0"
DATE: 1/6/89
JOB # 88121

JONES CREEK PROPERTIES
2108 ALMA AVE.

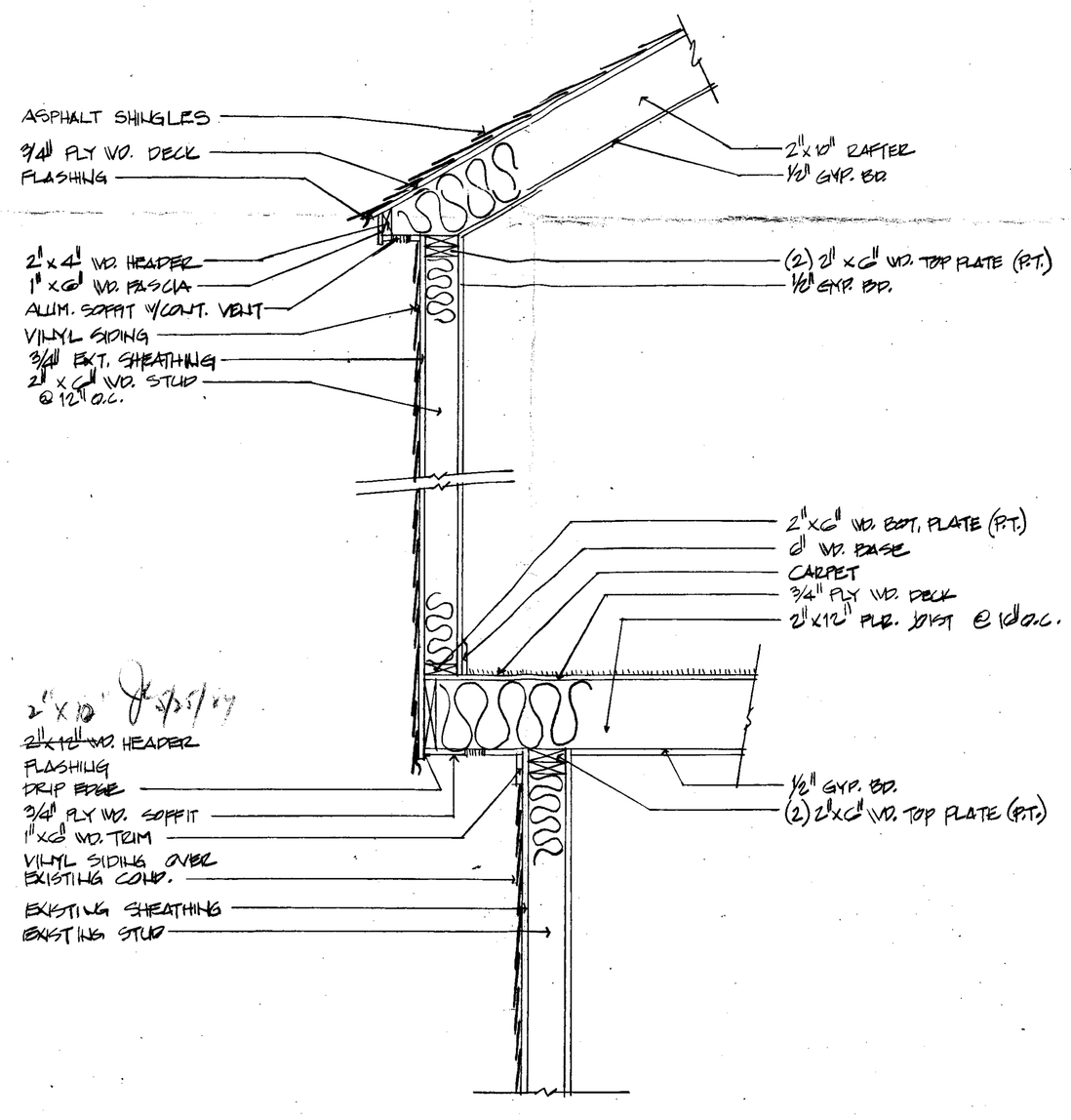
DESIGN SCAPE
1643 THAMES ST. BALTIMORE, MD. 21231



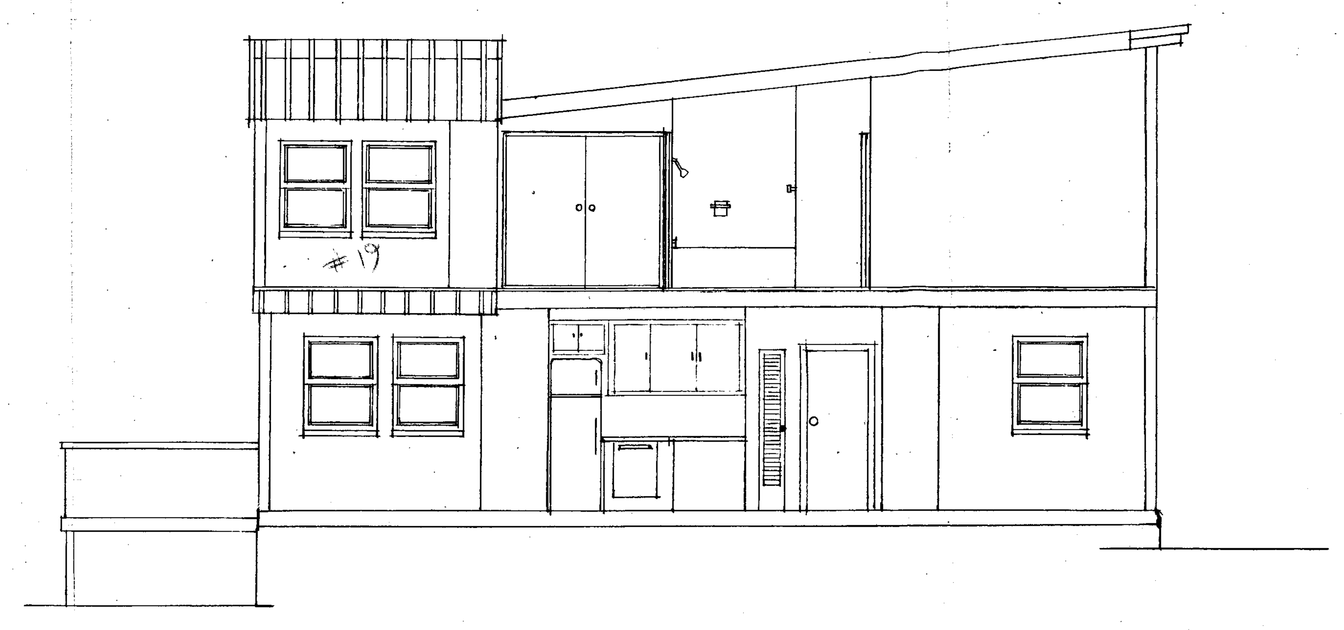
1 A-02 FRAMING PLAN: BED 1 - FLOOR
SCALE: 1/4" = 1'-0"



2 A-02 FRAMING PLAN: BED 1 - ROOF
SCALE: 1/4" = 1'-0"



3 A-02 WALL SECTION @ BED 1
SCALE: 3/4" = 1'-0"



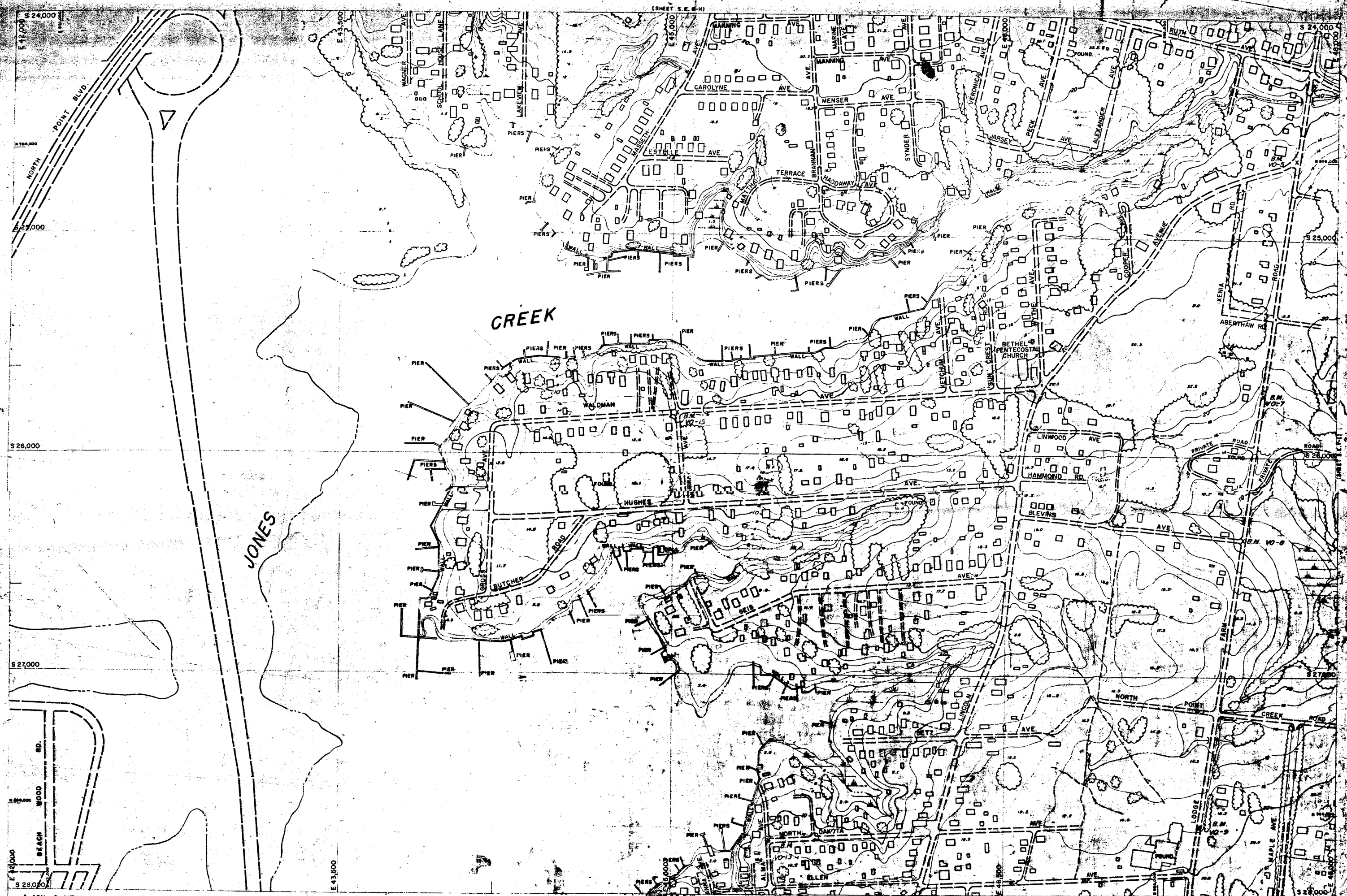
4 A-02 LONG SECTION
SCALE: 1/4" = 1'-0"

A.02

SCALE: AS SHOWN
DATE: 2/10/09
JOB # 08124

JOHNS CREEK PROPERTIES
2108 ALMA AVE.

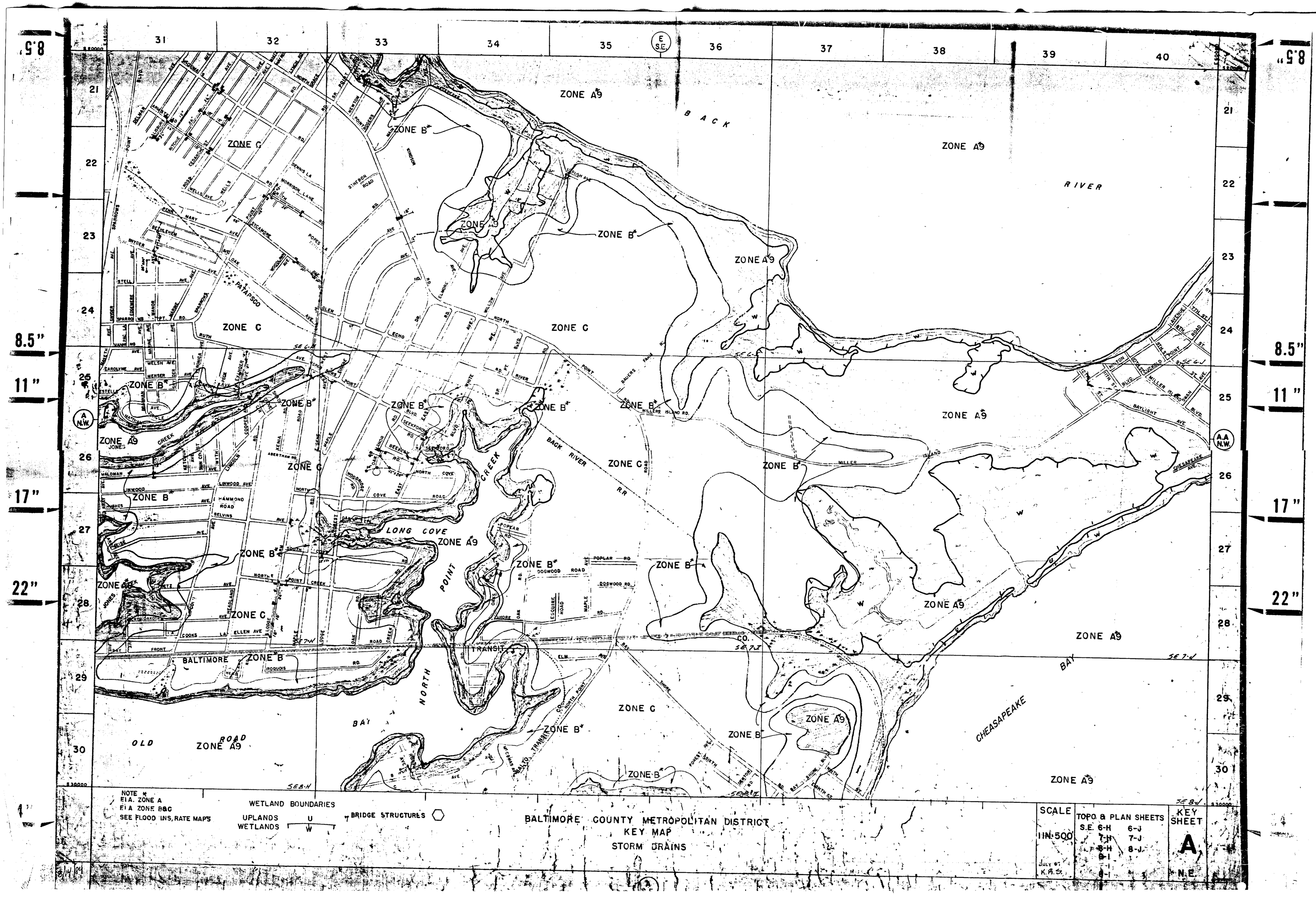
DESIGHSCAPE
1648 THAMES ST. BALTIMORE, MD. 21231



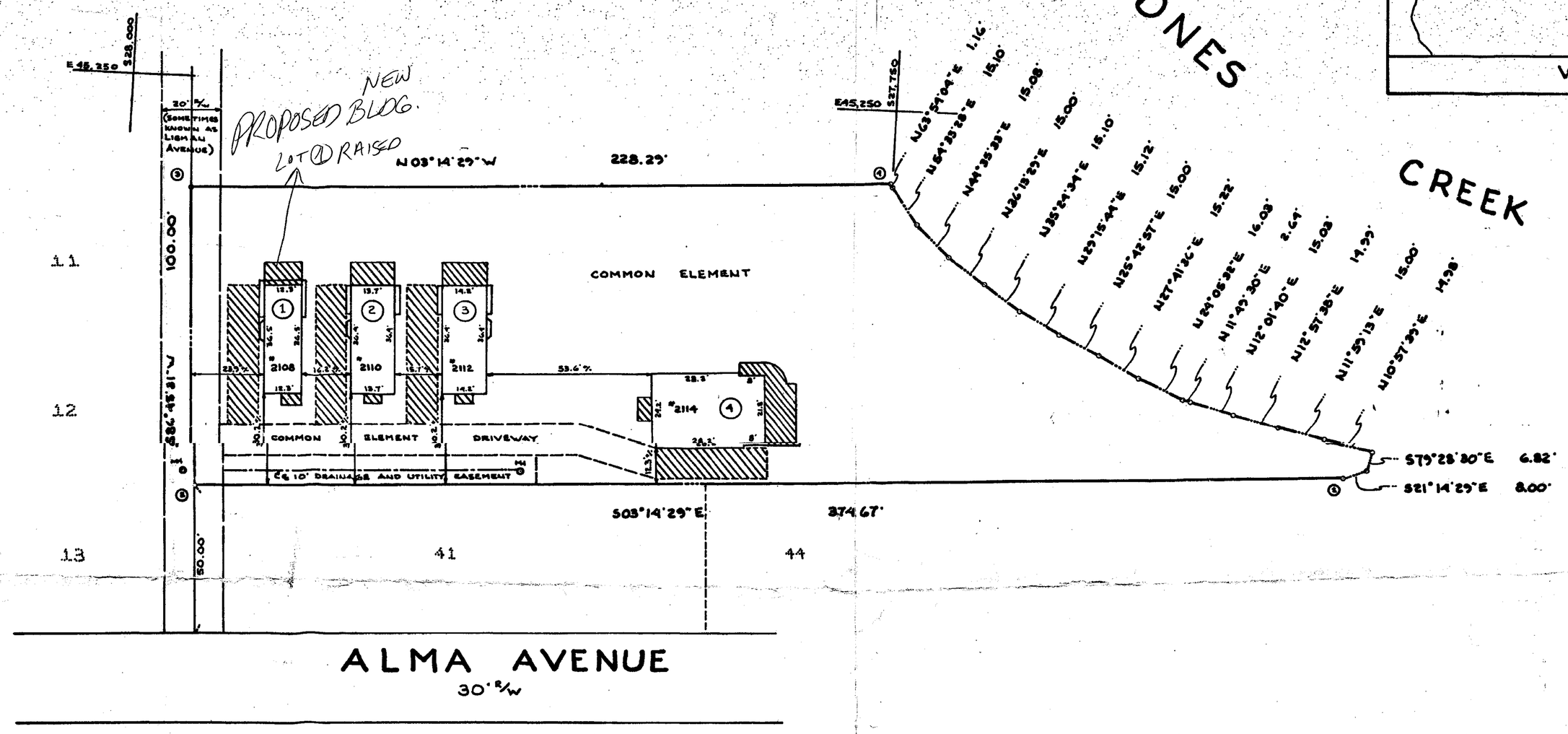
PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA

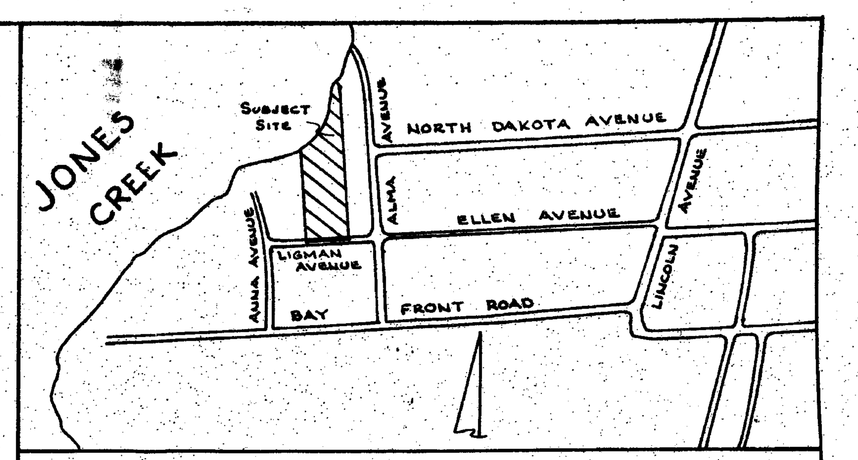
REVISIONS			SCALE	LOCATION	SHEET
	BY	DATE	1" = 200'	LODGE FOREST	
		8/3/83	DATE OF PHOTOGRAPHY DEC 1967		

Topography Compiled By Photogrammetric Methods
Using Aerial Survey Corp. Landing Wings


ZONE A9
ZONE B*
ZONE C
BACK
RIVER
PATAPSCO
LONG COVE
NORTH POINT
BALTIMORE
TRANSIT
CO.
OLD
ROAD
BAY
CHESAPEAKE
BACK RIVER
CREEK
NOTE *
FIA. ZONE A
FIA ZONE B&C
SEE FLOOD INS. RATE MAPS
WETLAND BOUNDARIES
UPLANDS U
WETLANDS W
BRIDGE STRUCTURES
BALTIMORE COUNTY METROPOLITAN DISTRICT
KEY MAP
STORM DRAINS
SCALE
1IN=500
JULY 67
K.R.S.
TOPO & PLAN SHEETS
S.E. 6-H 6-J
7-H 7-J
8-H 8-J
9-I
10-I
KEY SHEET
A
N.E.

COORDINATES		
Pt.	SOUTH	EAST
①	27,598.907	45,366.206
②	27,972.975	45,387.291
③	27,978.629	45,287.451
④	27,750.704	45,279.543





VICINITY SKETCH
SCALE: 1" = 200'

DENOTES LIMITED COMMON ELEMENT

DENOTE UNIT #

NOTE:
THE CONDOMINIUM IS COMPRISED OF LOTS 42 AND 43 OF THE PREVIOUSLY RECORDED PLAT OF "CHESAPEAKE TERRACE - SECTION A", PLAT BOOK 5, FOLIO 34.

OWNER'S CERTIFICATE

WE, THE WHISTLER CORPORATION, OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON, DO ADOPT THE WITHIN CONDOMINIUM PLAT CONSISTING OF 3 SHEETS OF THE PROPERTY AND BUILDINGS OF WHISTLER'S LANDING CONDOMINIUM. WE CERTIFY THAT TO THE BEST OF OUR KNOWLEDGE THE REQUIREMENTS OF SECTION 11-105 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND (1974) AS AMENDED HAVE BEEN COMPLIED WITH CONCERNING THE MAKING OF THE PLAT.

THE WHISTLER CORPORATION BY

Howard W. Ramsay
President DATE: 5-18-89

NOTE:
THE COORDINATES AND BEARINGS SHOWN ON THIS PLAT ARE REFERRED TO THE SYSTEM OF COORDINATES ESTABLISHED IN THE BALTIMORE COUNTY METROPOLITAN DISTRICT, AND ARE BASED ON THE FOLLOWING TRAVERSE STATIONS:
STA. X-6598
STA. X-6599

SURVEYOR'S CERTIFICATE

I, JOSEPH W. McGRAW, JR., A PROFESSIONAL LAND SURVEYOR OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THIS CONDOMINIUM, CONSISTING OF THREE SHEETS, TOGETHER WITH THE MASTER DEED FOR WHISTLER'S LANDING CONDOMINIUM INTENDED TO BE RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY, IS A CORRECT REPRESENTATION OF THE CONDOMINIUM DESCRIBED AND THAT THE IDENTIFICATION AND LOCATION OF EACH UNIT AND THE COMMON ELEMENTS, AS CONSTRUCTED, CAN BE DETERMINED FROM THEM.

I ALSO CERTIFY, TO THE BEST OF MY KNOWLEDGE, THE REQUIREMENTS OF SECTION 11-105 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND (1974) AS AMENDED HAVE BEEN COMPLIED WITH CONCERNING THE MAKING OF THE PLAT.

(PROF. LAND SURVEYOR) 5-16-89

STATE OF MARYLAND — JOSEPH W. McGRAW, JR. — PROFESSIONAL LAND SURVEYOR

J.S.T. ENGINEERING CO., INC.
3812 MARY AVENUE
BALTIMORE, MARYLAND
21206
(301) 444-8848

AS-BUILT PLAT
WHISTLER'S LANDING CONDOMINIUM
15TH ELECTION DISTRICT — BALTIMORE COUNTY, MARYLAND
SCALE: 1" = 20' — MAY 16, 1989
SHEET 1 OF 3

12-99 MSA SSU 1965-339-7

Pat #2